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**Ministry of the
Solicitor General and
Correctional Services**

Office of the
Chief Coroner

**Ministère du
Solliciteur général et des
Services correctionels**

Bureau du
coroner en chef

26 Grenville Street
Toronto, Ontario
M7A 2G9

26, rue Grenville
Toronto (Ontario)
M7A 2G9

Telephone/Téléphone: (416) 314-4000
Fax/Télécopier: (416) 314-4030

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THE CURRENT
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INQUEST MANUAL



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The Office of the Coroner and the Development of the Inquest

Coroner/Crowner

The office of the coroner in England has existed for more than a thousand years since about 975 AD.. After the Norman Conquest of 1066 the crowner's duties were to enquire into deaths that might be unnatural or violent, as the goods and property of felons causing a death were confiscated for the Crown. A fine was levied against the community if any Norman died by unnatural means. The crowner was in charge of the Royal Pleas (i.e. cases of importance to the Crown, or to be heard by the King), the seizure of any treasure trove, the seizure of objects (deodands) involved in the cause of death, as the collector of any revenue from wrecks, and for the Royal fish such as sturgeon. When crowner's became too active, investigations of deaths due to fever, apoplexy, and 'visitations from God' were prohibited.

The Inquest

Probably because of the lack of medical evidence, postmortem examinations, and forensic tests, inquests were used to make conclusions about a death. Under a 1276 statute ' **De Officio Coronatonis** ' the duties of the crowner were defined - to attend at the scene of the reported death, summon four or more men from neighbouring villages to view the body, hear evidence, and reach a verdict.

This statute established the basic questions to be answered by an inquest :

Who is the deceased; how; when; where; and by what means did death occur.

Over hundreds of years the duties of the coroner have evolved. Virtually all former judicial functions of coroners have been assumed by the courts. In Ontario the common law as it relates to the function, power, and duties of coroners has been repealed and the inquest is not a criminal court of record.

It should be remembered that in every death reported appropriately under the Coroners Act, the coroner's duties are to assume control of the body, view the body, and make such further investigation as required to enable a decision as to whether or not an inquest is necessary. (Section 15-(1) Coroners Act)

The inquest is a public inquiry to determine the identity of the deceased, when and where the death occurred, the cause of death and the means or circumstances leading to the death. As well, the jury may make recommendations directed to avoiding future deaths in similar circumstances, or on any matter raised at the inquest.

The verdict must not make a finding of legal responsibility or express any conclusion of law. An inquest should not be called if criminal charges are pending, and must be closed and the jury discharged if a person is charged during the inquest with an offence under the Criminal Code arising from the death. The Solicitor General may direct the inquest to reopen.

In Ontario the Courts are responsible for hearing any criminal matter arising from a death, where an inquest deals with the non-criminal aspects of informing the public and making recommendations to prevent future deaths. The inquest is designed to be less formal than court, and the jury may ask questions of the witnesses. Most recommendations of the inquest jury are adopted and in this way the inquest serves its function of reducing preventable deaths.

Coroner

1.
 - (a) All inquests will be assigned by the Regional Coroner.
 - (b) Obtain a new inquest kit from the Regional Coroner or court office as applicable.
 - (c) Ensure Letter of Direction is obtained from the Chief Coroner (Regional Coroner will assist if necessary), if applicable.
 - (d) Discuss the potential issues and special requirements of your inquest preparation with your Regional Coroner. Eg. expert witnesses; training of investigators in complicated medical issues.
 - (e) Ensure the family is notified of the decision to go to inquest prior to announcing it to the public.
2.
 - (a) Contact the appropriate level of authority of jurisdictional police for assignment of an investigating officer and a coroner's constable.
 - (b) If you require an alternate police force for either your investigation or your constable, make the request through your Regional Coroner who will contact the Chief Coroner.
3. Brief your investigator and coroner's constable with respect to their duties and the issues. Be specific about dates for completion of the brief. Your Regional Coroner may need to be involved at this stage.
4. Call Crown Attorney's Office and arrange for coroner's counsel.

5. (a) Arrange for a location and date for the inquest through the appropriate means. Notify the Regional Coroner as soon as this is done. Complete "Notice of holding an inquest" (Form CC011) for crown attorney.
- (b) Provide a notification listing to your coroner's constable. This will be done on "Notice of holding an inquest" (Form CC008) by the constable.
6. Maintain contact with the investigating officer, coroner's constable and coroner's counsel as necessary to monitor the progress of the investigation and inquest preparation.
7. Discuss disclosure with your counsel. Refer all queries and correspondence to your counsel during the investigative phase of the inquest. It may be improper for the coroner to respond directly to queries. If there are concerns, alert your Regional Coroner.
8. Tell the investigating officer when you would like the Coroner's Brief.
9. Arrange for a pre-inquest meeting as early as possible, (minimum of two weeks prior to the inquest start date.) Discussion of this meeting is in Section V.
10. Work closely with the Coroner's Constable prior to the inquest. Ensure everything is in order for the smooth running of the inquest once it begins.
11. Arrive early on the day of the inquest for last minute discussions with coroner's counsel and investigating officer.
13. Refer all queries and correspondence during the investigative phase for an inquest to coroners counsel.

Investigating Officer

1. Arrange the necessary team to achieve the aims of the investigation which includes:
 - (a) Identification and location of witnesses
 - (b) Scene examination
 - (c) Witness interviews
 - (d) Exhibits - photos, videos, radio/telephone, logs/transcripts, scene diagram, models.
 - (e) Prepare brief
2. Brief coroner and crown at frequent intervals. Assist in choosing witness list.
3. Consult with experts as directed by the coroner to include obtaining reviews and arranging inquest appearances as applicable.
4. Attend pre-inquest meeting.
5. Give final witness list to coroner's constable as applicable as early as possible to ensure timely issuance of subpoenas.
6. Give witness accounts to coroner's constable if applicable.
7. Attend at the inquest and assist the crown. Aid as necessary in the proceedings, eg, calling witnesses re time, interviewing prior to testimony.
8. **NOTE:** the investigating officer must keep the coroner apprised of any or all difficulties encountered. Ensure appropriate warrants are obtained as required for the investigation and preparation of the brief.

Coroner's Counsel

1. Legal Advice

- standing
- scope of inquest
- relevant witnesses
- admissibility of evidence
- propriety and legality of questions
- advice re challenges to inquest
- advice re possible criminal charges
- advice re charges under Occupational Health and Safety Act
- procedural matters during inquest

2. Pre-Inquest Meeting

- meet interested parties
- give disclosure
- indicate structure of inquest, anticipated order of witnesses, length of time, and relevant issues to be covered.

3. Liaison With Police and any other Persons Including Those With Standing Prior To Inquest

- deal with queries and correspondence on behalf of coroner during investigative phase of inquest.
- meet with police and coroner re witnesses, order, issues and completeness of investigation
- inform coroner of issues that other counsel may wish to raise

4. Divisional Court Challenges

- assist as required.

5. Expert Examiner in Court

- call witnesses in agreed order
- lead all relevant evidence
- file exhibits

6. Assistance to the Jury

- opening address, assist jury to understand their purpose, inquest procedures and the role of various players
- during inquest, act as facilitator re complex issues and technical evidence
- closing address, summarize concisely the facts and issues, suggest reasonable and practical answers to the five questions and recommendations.
- Assist the coroner, if requested, in reviewing the appropriateness of the jury's recommendations.

7. Other

Arrange for a date and place for the inquest as applicable.

Coroner's Constable

The Coroner's Constable should be in uniform.

- 1) Secure Coroner's Warrant for Holding an Inquest (Form 10 or Form CC008).
- 2) Secure the booking notification form from the coroner.
- 3) Notify the media of date and place through appropriate local methods.
- 4) Complete Notice of Holding of Inquest (Form No.8) to persons who might qualify for standing and the others identified on the booking notification form.
- 5) Complete Warrant for the Provision of Names from the Jury Roll (Form 7 or CC006A) from the coroner and obtain twenty to thirty eligible jurors and their respective numbers. (Form No.6B)
- 6) Consult with coroner and coroner's counsel re questions to prospective jurors to eliminate conflict or bias. Select a jury. Include one or more standby jurors. Inform the coroner of your selection.
- 7) Complete Summons to Serve as a Juror on an Inquest. (Form CC007).
- 8) Secure final list of witnesses to be summoned.
- 9) Type up Summons for Witnesses (Form CC001A) and have coroner sign. Regional Coroner may sign these.
- 10) Summon witnesses either by registered mail or by personal service.
- 11) Obtain list of experts. Assist coroners as required.

- 12) Complete Return of Constable (Form No.9)
- 13) The coroner's constables must make themselves familiar with regulations regarding allowable inquest expenditures.
- 14) Complete Witness Account (Form No.20) with name, mailing address, and postal code. Add travel, meals, accommodation and parking allowance as applicable. Add receipts as necessary. Sample form No. 20 is attached to this section.
- 15) Type Juror's Account (Form No.21) with name, jury roll number, complete mailing address and postal code. Add travel allowance if applicable. Sample form No. 21 is attached to this section.
- 16) Arrange for a stenographer. In some areas this arrangement is made by the crown's office when a court booking is made. Ensure that the reporter/monitor accepts current fees as per Regulations.
- 17) Arrange for interpreters as required. In some areas this is arranged through the Crown's office.
- 18) Duties during an inquest as listed on "INQUEST ACTIVITIES OF CORONER'S CONSTABLE."
- 19) If there is no formal court space available, ensure the inquest room is suitably arranged to reflect a formal atmosphere. This may require the addition of appropriate flags, photos or other trappings. Ensure Bibles available for oaths. Arrange for sound system if required.
- 20) Any other duties that may be required by the coroner.

Inquest Activity of Coroner's Constable

- 1) Arrange for jurors to assemble 30 - 60 minutes prior to scheduled inquest start time.
- 2) Greet jurors and escort to jury room.
 - (a) Verify jurors complete address and postal code and travel distance.
 - (b) Introduce the jury to their surroundings and brief them on expected protocols.
 - (c) Provide jury's with examples of previous verdicts for their review, if required.
 - (d) Release standby jurors if not already done so.
- 3) Arrange for coffee, water in the jury room.
- 4) Provide water in court for coroner, witnesses, jurors, stenographer and all counsel.
- 5) Ensure presence of Bibles or suitable religious material.
- 6) Provide paper, pencils/pens and clipboards for jurors.
- 7) Instruct the jury to select a foreperson before the start of the inquest.
- 8) Assist coroner in swearing in witnesses if required. Provide cautions when appropriate as per Inquest Manual.
- 9) Assist as necessary for meals.
- 10) Obtain receipts for jurors' accounts as applicable.

- 11) Number and identify each exhibit.
- 12) Ensure each exhibit is properly recorded. Either coroner or coroner's constable may sign.
- 13) Maintain each exhibit for use in inquest court.
- 14) Dispose of exhibits as directed by the coroner at end of inquest.
- 15) Assist, when requested by the coroner, in maintaining proper conduct of all participants and observers during inquest proceedings.
- 16) Prior to the coroner's charge to the jury prepare a Verdict (Form 10). Type in the applicable information down to but not including question 1 of the Verdict. For the jurors address on this form type only the municipality. Do not type in the individual addresses.
- 17) After the coroner has accepted the verdict and has read it into the record ensure the appropriate members sign the Verdict in the applicable places.
- 18) Provide copies of verdict as requested by the coroner.

Use of Experts

Section 15 (4)

Subject to the approval of the Chief Coroner, a coroner may obtain assistance or retain expert services for all or any part of his investigation or inquest.

This approval can be obtained through your Regional Coroner, or through the Chief Coroners office.

Independent Review

On numerous occasions in order to assist the coroner in clarifying the issues or to lend credibility to the issues, experts in a particular field are asked to independently review cases and to testify at Inquests.

The use of experts works best if problems are anticipated and the expert knows well in advance what you expect from him/her. The first step is to verbally brief the expert on the issues and obtain their consent to review the case. The second step is to provide the expert with all the documentation necessary for their independent review. This independent review should be completed well in advance of the inquest to enable the coroner, coroners counsel and investigating officer to take any necessary actions. The investigating officer should remain in contact with the expert as new information becomes available.

It is important to recognize that an interim report is simply a response to a set of circumstances in point and time, based on limited information and usually will not contain all the experts eventual testimony should he/she testify. This report should be considered as another investigative tool only and should not be in the brief. Disclosure of an interim report should be tightly controlled.

Witness at Inquest

It is the usual practice to call the expert who has previously independently reviewed the case.

It is important to carefully plan the experts appearance at the inquest. Most experts are extremely busy people and usually cannot take excessive time away from other duties. You may want his/her testimony at a given point in the proceedings. You also have the consideration of costs to have an expert for time spent in the inquest court.

If you do not have an option of when to call your expert, you will have to guarantee a time slot and may have to break the testimony of another witness.

It will be necessary for your counsel and investigating officer to spend time with your expert to review the evidence to date and alert him/her to additional issues raised at the inquest.

Know the basic thrust of your expert's testimony before the start of the inquest.

At times during the course of an inquest it might become necessary for you to call an expert on a specific issue for which you were not prepared. Call your Regional Coroner for approval. If you, your counsel or your investigating officer are not aware of one, your Regional Coroner or the Chief Coroner's Office may be able to assist you.

Assisting Coroner's Counsel At Inquest

There are occasions when the subject matter of the inquest is so detailed and technical that it is advantageous to have an expert assist your counsel throughout the inquest.

Some general guidelines for effective use of your expert are:

- a) plan well in advance
- b) have an independent review prior to the inquest
- c) have full disclosure to the expert
- d) investigate or call evidence as suggested by expert
- e) on-going interviewing, witness preparation and planning with expert in attendance
- f) expert should testify
- g) expert may assist coroners counsel in preparation for summation to the jury, with respect to recommendations.

Payment of Experts

Regulation 185 under the Coroners Act allows payment to be made to an expert under subsection 15 (4) of the Act.

Article 24 outlines the fees which may be paid to such experts. These fees may change from time to time and you should attempt to determine the fee which is applicable at the time.

Your Regional Coroner or the Chief Coroner will authorize payment of expert fees.

Important points to consider when obtaining the services of an expert.

- a) your expert will generally not get reimbursed at his/her normal compensation rate for their time
- b) the cost of any written report and/or expected attendance at an inquest should be agreed on prior to engaging the expert
- c) obtain authorization from your Regional Coroner
- d) the absolute worse time for starting fee negotiations is on receipt of an invoice

The Pre-Inquest Meeting

In past years the first time persons with standing were informed of the likely course of the inquest, was at the opening of the inquest or coroner's counsel gave the jury a short introduction of the circumstances of the death and the nature of the evidence to be presented. Coroners counsel would sometimes disclose in advance or on request. Disclosure was not consistent.

This is no longer acceptable. The Chief Coroner's office, recognizing the value of examinations for discovery and disclosure in civil and criminal law, have found the pre-inquest meeting to be essential in the preparation of an inquest. The pre-inquest meeting gives the representatives of persons requesting standing time for research and preparation and mutual decisions may be agreed to by the representatives present to eliminate testimony that would be irrelevant or repetitive, thereby saving time at the inquest. The inquest brief is usually made available to those applying for standing at this meeting. Many areas of potential confrontation can be avoided and the preventive aspect so of the inquest thereby enhanced.

Attendance

The coroner, coroner's counsel and the investigating officer(s) must attend. The coroner will chair the meeting, coroner's counsel will usually conduct the meeting and the investigating officer will assist coroner's counsel with respect to the brief. Persons interested in the inquest and counsel or agents representing persons interested in the inquest should attend. It is most appropriate for the actual counsel or agent who will be attending at the inquest to argue for standing to attend this meeting. Those present will be asked for their comments and undertaking with respect to any aspect of the meeting. Often a clerk, assistant attends and it creates the necessity for long explanations, and lack of consensus. It also often results in misunderstanding and arguments from counsel who did not attend at the start of the inquest.

The family may be present without counsel and some extra care should be taken to include them in the proceedings.

Business would include selection of witnesses, order of questioning and summation, disclosure of the brief, disclosure from other persons interested in the inquest, starting and stopping times, special time off requests etc.

Time and Place of Pre-Inquest Meeting

The meeting can take place in any suitable surroundings. it is usually held at the coroner's office, coroner's counsel's office or the office of the Regional Coroner.

The meeting must be planned well enough in advance to allow for participants to arrange their schedules. This date can be set fairly early. The investigating officer must be instructed to have the brief prepared prior to this date.

The time of the meeting must allow for sufficient time for participant to adequately prepare for the start of the inquest. This should never be less than two weeks. it should be longer in more complicated inquests where disclosure is proportionately larger.

In some circumstances it may be necessary to hold a pre-inquest meeting in court with a recorder/monitor to allow persons interested in the inquest to make a formal application for standing well in advance of the actual start of the inquest. It is not necessary to have the jury present for this meeting. This will allow for extended consideration of the requests by the coroner and any resulting legal challenges to be made prior to the planned date of the inquest. In these cases disclosure of the brief can follow granting of standing by the coroner or by a review court.

Coroner

The coroner should take this opportunity to set the rules for the conduct of the proceedings. it is an opportunity to point out that an inquest is not a trial and is not an adversarial procedure. It is a fact finding exercise leading to possible recommendations which if implemented might prevent a death of a similar nature in the future.

The coroner should avoid a detailed discussion of the issues before the inquest.

Coroner's Counsel

Coroner's counsel will conduct the meeting, receive undertakings, give disclosure, attempt to reach a consensus with respect to the final witness list and the order of witnesses, and work with other counsel as necessary to prepare for the opening of the inquest.

If there is a pre-inquest in court to hear formal applications coroner's counsel would act in the normal capacity of legal advisor to the coroner.

Undertaking may be verbal or written depending upon the circumstances. See Section VI for details on disclosure.

Investigating Officer

The investigating officer should have enough copies of the brief to allow for appropriate disclosure to persons interested in the inquest. He/she will assist coroner's counsel in providing details during discussions about witnesses and experts.

In preparation of the brief which will be disclosed to persons seeking standing include only the statement of those whom the crown does plan to call as witnesses.

Disclosure of Inquest Brief

Traditionally disclosure of the coroners brief has taken place to facilitate the inquest process by informing persons requesting standing of the issues, the witnesses available to the inquest, and the kinds of expertise being brought before the jury. This has usually occurred at the pre-inquest meeting. At this meeting it may be appropriate for coroner's counsel to seek disclosure from persons requesting standing with respect to witnesses they may wish to bring forward, their view of the issues and any expertise they might feel would assist the jury. Disclosure may by necessity take place in a continuum from any time prior to and during the inquest as necessary. Assistance with respect to disclosure is available through your Regional Coroner.

A Decision on disclosure should ideally be a joint decision of those involved in the matter including the coroner; coroners counsel; and the investigating officer.

A simple formula is:

- A. The authority ultimately is that of the coroner.
- B. Coroners counsel should control disclosure as applicable.
- C. The investigating officer should not make any independent disclosure.

Considerations:

- (a) whether the person seeking disclosure has applied for standing.
- (b) whether a person has a right to review a brief to decide whether or not they should apply for standing.
- (c) timing of disclosure

- (d) undertakings - the right to protect the brief or parts of the brief
 - (a) privacy issues
 - (b) prevent abuse of process
 - (c) use of brief for purposes other than the inquest.
- (e) possible advantages and disadvantages of making specific disclosure either before or during the inquest process.

Police

The police specifically assigned to you as investigating officer for the purposes of the inquest, will gather and secure any or all evidence and statements. They initially will wish to review the coroners file as it exists at that time. Although it is usually okay for them to see the entire file, there may be occasions when the coroner will withhold particular documentation if it does not pertain to the issues of the inquest.

If a police force's conduct is an issue before the inquest, that force may have no greater right of access to disclosure than any other potential party with standing. [E.g. a tape seized of an arrest booking at police station.] This is true whether or not the jurisdictional police force is preparing the brief for the inquest. The investigating officers must not disclose any information to the police force under investigation (even if it is there own force) without the express consent of the coroner.

Government Agencies

There may be ongoing cooperation between ministries during the investigation for an inquest. For example, provision of fire investigators' reports and labour investigative reports.

These reports are routinely shared with coroners. They are collected under warrant by the investigating officer for purposes of the Inquest.

The normal cooperation enjoyed between ministries does not always apply in reverse with respect to an inquest. Disclosure to ministries should be done in accordance with normal disclosure rules and done at the pre-inquest meeting, unless general disclosure of the brief occurs prior to this meeting. Any individual disclosure, prior to general disclosure, must be with express consent of the coroner.

Families

Section 18 of the Coroners Act allows for the normal disclosure of the Post Mortem, the Coroner's Investigation Summary and any toxicology results. This is usually done when they become available. The Act does not outline any right of the family to disclosure when an inquest has been called.

The coroner may wish to withhold this information from the family prior to general disclosure if it might appear to create an apprehension of bias to do otherwise, or if he/she has any concerns about public disclosure of the facts prior to the inquest.

Disclosure of all other information should be at the pre-inquest meeting.

Counsel/Persons with Standing

The suggested procedure is to not grant standing prior to the inquest but at the same time suggest pre-disclosure to only those who will be granted standing. This appears to be a contradiction.

If a brief is disclosed to a person who might reasonably given standing on request, and who on reading the brief declines to seek standing, the brief can be reclaimed.

The coroner may wish in exceptional circumstances allow a person to review a brief for a determination of whether or not the person wishes to apply for standing.

Disclosure to all counsel should occur at the same time. There may be unique circumstances where information may be given to individual counsel prior to general disclosure, but that should be a rare occasion.

It is important that your counsel work with other counsel in the period of work up to the inquest.

Agents

Agents are not bound by professional ethics to adhere to agreements.

A disclosure form has been prepared. This Undertaking for Disclosure should be shown to agents, or persons and they should sign it prior to being given the brief.

NOTE: It may not always be to the advantage of the process to use this form. The coroner and counsel should give careful thought to this aspect of disclosure.

NOTE: If you are disclosing material to a number of persons, agents and counsel and a decision is made to use the Undertaking for Disclosure, it should be given to all persons, agents, or counsel involved.

NOTE: A sample disclosure form is included overleaf. This form is also a part of the normal inquest package.

Media

Prior to the Inquest:

The coroner must not discuss any details or issues with the media. There may be a requirement to explain procedures, or why the inquest was called in the most general terms. Prepare a response well in advance of the question and be consistent.

During Inquest:

There may be requests for disclosure by the media of sensitive materials e.g. medical records, video or audio tapes. Even if these have already been made exhibits there is some discretion allowable on behalf of the coroner to withhold these. If there is a potential for these problems to arise, plan your actions in advance. If the materials made public in the inquest is releasable, extract those portions and make them available in a better form for release. This would prevent media coverage of facts, persons or information not already made public.

Following the Inquest:

Most experienced coroners do not give interviews following the verdict. If you do avoid a scrum.

Legal Arguments Prior to Inquest

Any legal arguments which might arise prior to the start of an inquest should be handled by your counsel or if necessary by the Crown Attorney Civil office.

An example of this might be a challenge to the jurisdiction to hold an inquest.

Remember you cannot make rulings with respect to issues other than standing prior to the start of the inquest. You can however work with your counsel to effect compromise which may satisfy all parties.

Legal Arguments During Inquest

There are three basic ways to deal with legal arguments between counsel.

1. In open court on the record with the media and public
2. In open court on the record excluding the jury, Voir Dire.
3. In chambers excluding both the media and public.

In either of the above situations it is important that the coroner not meet with any single or partial group of counsel.

The essential ingredient in any legal argument is a creation of a record of the arguments and comments of all those taking part.

The use options 2 or 3 above should be done only after careful consideration of the advantages and disadvantages of that option compared to the first option.

Counsel are taught in an adversarial system. Their task is to present one side only of an argument with as much force as they consider necessary. It is not their job to arbitrate. They assume that if a coroner is presented with able arguments, each of them biased, he/she will be able to come to a correct decision.

It is important that the coroner not take offense to this behaviour and not to assume actual acrimony on behalf of the various counsel. The coroner should not attempt to mediate between counsel. The coroner should remain aloof, above the fray, listen to the submissions and when appropriate firmly put an end to the argument and move on.

There are some basic steps which you as coroner might take when faced with an objection. It is most important to create a clear record of the events from the moment the objection is raised.

When a party raises an objection:

- A. If someone is speaking e.g. witness or counsel, identify them by name and ask them to stop.
- B. Identify the person raising the objection and ask them to speak. Ensure objecting counsel has full opportunity to state the objection.
- C. Take notes as necessary.
- D. If in doubt about the substance of the objection, repeat it back and ask for clarification.
- E. Ensure objecting counsel has completed their comments.
- F. You may wish to ask for comments from other counsel. It would be better to know what further objections might arise prior to making a ruling.
- G. It is appropriate for your counsel to make his/her comments to you on the record in open court. Following arguments if you take a recess to consider your ruling, you may not seek further advice from your counsel. You may have limited access for a legal opinion on the wording of your ruling.
- H. Consider whether you can make a ruling then or whether you should take a recess to consider your options.
- I. Prepare your answer as carefully as you can. This may take a few moments or may have been formulated while listening to the arguments. If you recess you may wish to write your decision and read it into the record.

- J. Seek whatever assistance you may require. Remember you do not have to make a decision before you are prepared. Your Regional Coroner, other experienced coroners, other Regional Coroners, and the Chief Coroner's Office are all at your disposal.
- K. When you have made your ruling do not allow counsel to create a discussion on issues already ruled on.
- L. Monitor the inquest to ensure the intent of the ruling is honoured. Your counsel will assist you in this.

It is particularly important to establish control very early in the inquest. You may find that a trend develops where you are ruling against one counsel on a fairly consistent basis. The natural and charitable human instinct is to give this counsel something once in a while. Be very cautious about this. Do not create a double standard. It may result in a shotgun approach by counsel and a corroding of your authority and control of the process.

Remember if there is a Divisional Court challenge a good record is invaluable to everyone concerned.

It may be necessary to hold meetings in chambers with all counsel. These meetings are normally held without a court reporter present. These meetings may cause the following difficulties.

- A. Although this may be considered off the record anything you say may be used in an affidavit to a higher court.
- B. Meeting in chambers because of acrimony in the inquest may result in an appearance of a lack of faith in your counsel to properly control the flow of evidence or to be impartial and it may be an invitation to all counsel to approach you directly.
- C. You may find yourself in Chambers dealing with personality clashes between lawyers.

Voir Dire

An appropriate reason for a Voir Dire may be to discuss evidence which has not yet been ruled admissible.

Legal Arguments Following Inquest

Following the proclamation ending the inquest you can no longer make rulings or judgements. Any legal argument would have to be handled by your crown or Crown Law Civil.

Standing

Section 41 (1) On the application of any person before or during an inquest, the coroner shall designate him as a person with standing at the inquest if he finds that the person is substantially and directly interested in the inquest.

The Act does not define substantial and direct and this has caused coroners some difficulties in times in arriving at just conclusion.

To gain an understanding of the test required by Section 41 we will: look at the history of the present Coroners Act and this section in particular; analyze the statutory powers; and review the decisions respecting standing through the appeal process.

Historically the powers of the coroner were based in common law. In that law there were no rights of persons to intervene in the inquest process and there was full discretion on the part of the coroner. This is illustrated in Wolfe v. Robinson where Mr. Justice Wells found that the invariable practice followed at coroner's inquisitions was that no one other than the coroner, jurors and coroner's counsel had the right to examine witnesses.

In 1964 the Ontario Royal Commission Inquiry into Civil Rights headed by Chief Justice McRuer was given the mandate of: examining the statutes and regulations of Ontario with respect to how they impacted on the freedoms, rights and liberties of the people of Ontario; making recommendations as necessary to safe guard those freedoms, rights and liberties. The right of standing at inquests was reviewed by the Commission.

The Commission reviewed three Commonwealth Jurisdictions which allowed citizens the right of intervention at Public Inquiries if the reputation might be prejudicially affected.

The Commission reviewed Wolfe v. Robinson and heard evidence from a number of sources with respect to standing. The Commission found that it was wrong that those who might be affected either socially or financially by a jury's verdict did not have a right to be heard or to cross examine.

In 1969 the Ontario Law Reform Commission, was asked to consider the recommendations of the McRuer Commission with respect to the Coroner's System in Ontario. The Commission published their report on the Coroner's System in Ontario in 1971. This was supported by the recommendation to repeal the common law with respect to the Coroner's System in Ontario. It formed the basis of the new Coroners Act of 1972. They recommended that the Office of Coroner should be created and defined solely by Provincial legislation.

The recommendation "Persons who, in the opinion of the presiding officer, are substantially interested in the inquest, be deemed to be persons with standing at the inquest" led to Section 41 (1).

This right to be involved became a mandatory right if the conditions were met.

Out of the Ontario Royal Commission Inquiry in Civil Rights and the Ontario Law Reform Commission and subsequent reviews came the private law approach to granting of standing. A person had a substantial and direct interest if they had a personal or pecuniary interest in the inquest or if they might be subject to implicit criticism or censure.

With few exceptions this was the test to be applied until the Divisional Court ruling in Stanford v. Harris. In this case Mr. Justice Campbell found that a unique set of circumstances existed where the person making application was so affected by the potential recommendations to be made by the jury that his substantial interest amounted to a substantial and direct interest. This test is in addition to that of the private law approach. This new test has been used with some success since that ruling.

Further refinements to the test for standing arose out the Divisional Court ruling in Urban Alliance v. Huxter 1992. Prior to this ruling it was already well established that applicant for standing did not have to have a substantial and direct interest in the entire inquest. In this case the court awarded standing on the basis of a potentially significant issue. The court also stated that it was the province of the jury to make the determination of the significance of an issue. In arriving at this decision the court applied the test of substantial or direct as found in the French Version of Section 41 (1).

A test that has not been determined in law is that of a residual discretion of the coroner to grant standing beyond the limits of Section 41(1). There are past incidences where coroners have used discretion to allow standing at inquests. In Stanford v. Harris Mr. Justice Campbell in obiter stated that a coroner does have a residual discretion in granting standing. In Urban Alliance v. Huxter the coroner ruled that he did not have residual discretion to grant standing. Divisional Court reviewed this ruling but did not make a decision with respect to it.

The general prerequisites to any decision on standing and those against which any review will be made are a full and fair hearing of the applicant and impartiality on behalf of the coroner making the decision.

The coroner in hearing applications for standing will be readily able to determine those persons interested in the inquest that have an obvious substantial and direct interest and must be granted standing. He/she will just as easily determine those who obviously do not. Difficulty arises in those incidents where it is not clear in what category the applicant falls. One conceptual model is that of two concentric circles. In the centre circle fall those who deserve standing and outside the second circle fall those who do not deserve standing. Between the first and second circles fall those who on first review do not seem to fall in either of the two categories. It is in attempting to decide on standing for these that advice and consultation should be sought as required. This is also where the coroner would apply discretion with respect to standing if and when such discretion is determined to exist.

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EXECUTIVE SUMMARY
OF
STANDING ISSUES

CENTRAL THEME :

- > Coroner must give a full and fair hearing.**
- > Coroner must consider all aspects of an application.**
- > Coroner must apply the tests for standing.**

Private Law Approach

- > Personal interest**
- > Pecuniary interest**
- > Subject to implicit censure or criticism**

Common Environment Approach

Brown/Patterson	1974/1975 - Consideration should be given to those who have a common experience with the deceased
Duck/Bennett	Milhaven Inmates Committee
Inmate Committee/Meyers	missed question of law and fact > " no direct interest " > " interest the same as that of the Public "
Fountain/Lawers	Group of residents living near a quarry requested standing following the death of a neighbour. Denied.. Up to this point the court recognized that a common environment can create a Substantial interest but the test has two legs (direct)
Stanford/Harris	> the coroner erred in not measuring the unique and identical circumstances shared by the deceased and the applicants > failed to recognize that in the interest of the applicants in the potential recommendations was so acute as to be direct and substantial

PUBLIC INTEREST GROUPS

On our own/King	application of eight groups through single counsel. application denied...
Stanford/Harris	the Private Law approach fails to recognize the emerging public interest function of the inquest
Christopher Robin	Standing to People First on basis of Stanford Harris
UARR- BADC/Huxter	public concern in and of itself is not sufficient for granting of standing in absence of any fact to establish the issue

DISCRETION

Brown/Patterson	the language used is mandatory not discretionary
Inmate Committee/Meyers	to some extent involves the exercise of discretion
On Our Own/King	there is no discretion
Stanford/Harris	Coroner has a residual discretion to grant standing
Beckon/Young	the common law component has been abolished. Have regard to its legislative history, it is not reasonable to interpret the Act as conferring any more powers respecting inquests than those prescribed to it.
BADC/Huxter UARR/Huxter	Residual discretion was not decided. (the consensus is that they would have found that residual discretion did not exist)

BIAS

TEST:

- > what would an informed person viewing the matter realistically and practically, and having thought the matter through conclude.
- > Test originally established in Committee for justice and Liberty v. National Energy Board [1978] 1. S.C.R. 369..
- > This test has been upheld over the years.
- > Notable uses : Evans/Milton
UARR-BADC/Huxter

STRATIFICATION

Standford/ Harris	> " The interest of the applicants will be so acute that it will amount to a substantial and direct interest ".
	> This introduced the concept of stratification.
	> The interest of such applicants is in the recommendations only and disclosure could be different than to applicants who had an interest in the whole inquest.
People First /Bennett	> The coroner does not have the right in an institutional death to draw a line between the general social / preventive functions and the investigative interest of those acutely connected to the death
	> Both the Divisional Court and Appeal Court supported the clear distinction of those interests and endorsed the power of the coroner under section 41 - (2)(c).
People First /Bennett	> The coroner does not have the right to deny persons with standing access to the full inquest brief
	> Divisional court upheld withholding of some of the brief
	> Appeal court decided in these particular circumstances it was unfair to withhold certain information.
	> The Appeal court granted the coroner the right to ask for undertakings with respect to the use of the information and to make appropriate deletions
UARR - BADC /Huxter	> Supports the notion that the disclosure ruling in People First/Bennett applied to that case only

Edward Malon Inquest

The first case to be brought before the courts concerned the inquest in the suicide of Edward Malon, an inmate house in the segregation unit at Millhaven Penitentiary. The Crown Attorney provided Mr. Copeland, a solicitor with a list of witnesses on the first of October. On October the third, he informed the Crown Attorney that he and a number of inmates wished to apply to be designated as persons with standing. On October the fourth, he telephoned the Coroner to ascertain if he would designate himself or his inmate clients as persons with standing. The Coroner refused. On October the ninth, immediately prior to the opening of the inquest, Mr. Copeland applied in Chambers to have the applicants designated as persons with standing. He presented facts, material and argument, at the conclusion of which the Coroner dismissed the application.

BROWN ET AL V. PATTERSON (November 1974)

The applicants applied for judicial review of the Coroner's decision, an order prohibiting the Coroner to proceed with the inquest until one of the applicants has been granted standing and a mandatory order requiring the coroner to designate one or more of them accordingly.

The Issues were:

1. The applicant submitted that the coroner had prejudged the application by indicating his refusal following an informal telephone communication.
2. Whether the coroner has a discretion in granting standing.
3. What are the factors that the coroner must consider in ruling on the application.

Issue 1: Prejudging an application for standing.

The Court:

When a person applies for standing, the coroner must embark upon an inquiry and make a finding whether or not the person has such an interest. In doing so he is required to act judicially in the sense of that expression as it denotes a standard of conduct. He must afford the applicant a full opportunity to be heard. He must make his finding on the basis of a fair hearing. The onus is on the applicants to demonstrate that in making his decision the coroner has failed to act judicially.

We find that the coroner did not make his decision in accordance with the standards to be applied by a person acting judicially. He prejudged the issue and as we view the transcript approached the formal application with a closed mind. His finding is a nullity and the matter will be remitted to him to make his finding on the basis of proper principles.

Implication:

In making his decision the coroner must act judicially and give the applicants a fair hearing.

Issue 2: Discretion in granting standing

Coroner:

The applicant submitted that the coroner:

The Court:

The Act Section does not give the coroner discretion in granting standing. The language used is mandatory, not discretionary. The coroner must, however, make a finding that the applicant has an interest before he is obliged to admit him to standing; he may of course find that the applicant has no such interest.

Implication:

Once an application has been made the coroner must make a finding and if he finds that the applicant qualifies, he must grant him standing.

Issue: 3. Factors to be considered in ruling on an application for standing.

The Court:

The Act sets out in considerable detail how the evidence at an inquest shall be taken and makes it clear that the Legislature intended that there be a full inquiry. It also mandates that the proceedings shall be in public that the jury may make recommendations and that persons with a direct and substantial interest shall be permitted to participate. All this indicates that the Legislature intended that the jury be free to draw conclusions from the facts that may prompt them to make recommendations on questions of public concern.

"It is in the light of these purposes and functions that the coroner must make his finding whether or not a person applying" for standing " has a substantial and direct interest in the proceedings."

Edward Malon died in segregation and some of the applicants were and some still are in segregation. "That group share a common experience. It may emerge that that environment was a factor in causing his death. If that should be, we consider that that would proper justification in law for a finding that those applicants are persons having a substantial and direct interest in the inquest."

Implication:

That not only must people applying for standing because they fit under the private law test be considered but also people having a common experience with the deceased given the purposes and functions of the Act.

The Court squashed the ruling of the coroner and remitted the matter to him to decide on proper principles and proper inquiry.

The inquest reconvened and the application was heard by the coroner. Standing was denied to six inmates but granted to Mrs. Malon. This led to the second challenge in Divisional Court.

Brown v. Patterson (April 1975)

The Issues:

Issue: 1.

1. That the coroner erred in law by refusing to grant standing to the six applicants.

The Court:

Judge Henry in his decision of November 1974 did not try to lay down an exhaustive code or definition as to what might constitute the qualities attaching to a person with standing. he simply called attention to some issues that might be considered by the coroner and it would appear that he (the coroner) has considered those issues. This ground of attack fails.

Implication:

When the coroner has considered the issues that he must, in a judicial and fair manner, his decision is not subject to review.

Issue: 2.

The he fail to call as witnesses all six applicants.

The Court:

The coroner has decided that the witnesses called before the inquest are sufficient for his purposes. The applicant (Mrs. Malon) can exercise her rights and call witnesses that she feels can give relevant evidence at the inquest. Counsel argues that the coroner will not allow him to call his own witnesses. "We find nothing in the record to justify this conclusion". There is no legitimate basis for complaint on this ground.

Implication:

Persons with standing have rights at the inquest but if they choose not to exercise those rights there is no ground for complaint.

Issue: 3.

That there is a reasonable apprehension of bias on the part of the coroner.

The Court:

A number of points were referred to the court to show reasonable apprehension of bias but the court did not agree that there was such a apprehension of bias.

Glen Landers Inquest Inmates Committee of Millhaven Institution

Gordon Duck et al. v. Ross Bennett

Background:

Glen Landers, an inmate at Millhaven Institution, had been shot by a guard as he climbed over the outside wall of the Institution. Standing had been granted to the Landers family and denied to the Inmates Committee and the three people on the Committee. An application for judicial review was heard in weekly court in front of Garrett J. as a matter of urgency and with the agreement of all parties was not referred to the full Divisional Court.

The Issues:

1. That the coroner should have granted standing to the Inmates Committee because they and other inmates feel that there are grey areas about the handling of guns and that since they are "residents" of the same Institution as the deceased, they should be given the right to be represented at any inquest which concerns indirectly their environment.
2. That the coroner should have granted them standing because they also wish to make representations to the jury as to recommendations that the jury should make with respect to the use of firearms in the Institution.

Mr. Justice Garrett reviews the requirements of the Coroners Act for the granting of standing, then reviews the qualifications of the persons applying for standing.

Issue 1:

The Court:

" Neither of the three people on the Committee have any knowledge of the attempted escape. Their interest is said to be of a social kind, in that they and other inmates feel that there are grey areas about the handling of guns and that since they are "residents" of the same Institution as the deceased, they should be given the right to be represented at any inquest which concerns indirectly their environment.

Issue 2:

The Court:

Inmates Committee.....missing some here

They also wish to make representations to the jury as to recommendations that the jury should make with respect to the use of firearms in the Institution."

" Section 33 of the Act is the Section under which the coroner grants standing. The interest of an applicant must be "direct and substantial:. Here in my judgement, the coroner found that the Inmates Committee may have had a substantial interest but not a direct interest. He certainly considered the appropriate section and the language thereof and he came to a conclusion about the inmates, which was that they did not fall within the definition.

The coroner decided that the interest of the Inmates Committee did not fall within Section 33 and he declined standing. I am quite sure that had he found that their interest did fall within Section 33 he would have as a matter of course, given them standing, because the section requires that the coroner "shall grant standing".

Implication:

Once the coroner has properly considered the application and reached a proper conclusion, the court will not overturn his decision. Also this implies that in order to qualify for standing the interest must be both direct and substantial.

Arlene Cote Inquest

Meyers and Inmate Committee of Prison for Women

Background:

The Inmates Committee of the Prison for Women applied for standing at the inquest into the death of Arlene Cote, an inmate who had committed suicide in the prison. The presiding coroner having heard the submission of Mr. Allan Manson on behalf of members of the Inmates Committee and having considered his decision, ruled that these persons did not qualify under the provisions of the Act in respect to standing. Mr. Manson applied for judicial review. This was heard in Weekly Court on September 26, 1980 by Eberle J.

Issue:

Did the coroner err in applying the test for standing?

The Court:

"The matters in issue turn on the test for establishing status, that is, is the person "substantially and directly interested in the inquest?" "Distinct advantages accrue to a person who is so designated. To me it is clear that the test laid down in the section involves a mixed question of fact and law, and to some extent involves the exercise of a discretion by the coroner, a discretion to be exercised in the facts and circumstances of each case."

He then quotes the coroner's ruling at the inquest. Having said that the two important determinants in this decision were the words substantially and directly interested, the coroner found that:

" The Inmates Committee may have an interest as to what is revealed at this inquest in the same manner as any agency or member of the public. However, I do not find the necessary ingredients of direct interest in the death. "

" It is apparent that the coroner directed his mind to the issue before him and that no error in jurisdiction arises from any failure to do so. "

Implication:

When the coroner applies his mind to the facts presented to him and tests the facts to see if they give the applicant substantial and direct interest, he cannot be found to have made an error going to his jurisdiction.

Issue:

That the coroner had not given reasons for his ruling although he had been requested to do so.

The Court:

In my view, it is clear that the coroner gave reasons, which I have quoted in full. He put those reasons on two grounds. He said that the applicants had neither a substantial nor a direct interest. He found that the Committee's interest was no more substantial than that of any other member of the public. In the next sentence, he also found that the applicants did not have a direct interest.

The Court also emphasized that since the ruling of the coroner rested on two points: Direct and Substantial and that the argument of the and that the argument of the Crown Attorney addressed mostly substantiality that the coroner's decision was his and his alone. He went on to say:

" I pause to say that there does not appear to be any legal obligation of on the coroner to give any reasons at all, neither by the Coroners Act itself, nor by The Statutory Powers Procedure Act, which expressly exempts coroners from any requirement to give reasons. "

Implication:

The coroner will not make an error going to his jurisdiction if he applies his mind to the facts before him and tests those facts to see if they give a direct and substantial interest.

This ruling also touches on the fact that the decision to grant standing is not delegatable.

Finally, it spells out that there is no legal requirement for the coroner to give reasons for his ruling. This has not been followed by the coroners in recent years where reasons have been given.

Issue:

Was the coroner fair to the applicants because he had a private discussion with the Crown Attorney following the application for standing?

The Court:

Justice Eberle goes on to comment on the relationship between the coroner and the Crown Attorney and the dual role of the Crown Attorney at an Inquest. Section 30 (1) of the Coroners Act requires the Crown Attorney or his designate to attend at every inquest and act as counsel to the coroner at the inquest.

" This may require him to give legal advice to the coroner in the manner of a solicitor and his client. As well, he is required to argue matters that arise during the course of the inquest. This is obviously a role of a public nature, while the other role may properly have private aspects to it. Whatever took place in the discussion between the coroner and the Crown Attorney, it is evident that a full argument of the Crown Attorney's position was made on the record in the presence of counsel for the applicant, who replied to it. Only then was the decision given. I do not recommend to coroners that they engage in private discussions with the Crown Attorney during the course of an argument but it is apparent that the provisions of the Coroners Act contemplate the Crown Attorney having the dual role I have indicated and I can find nothing wrong with the procedure that was followed in this case. "

Implication:

The Crown Attorney's role at an inquest is recognised as being of a public and also a private nature. Although this can give rise to objections, the role of advisor is recognised and as long as the decision is the coroner's own decision, the Act allows the Crown to advise the coroner.

Issue:

That the committee should be given special consideration because it is an official Committee established by Directive of the Commissioner of Corrections Canada.

The Court:

" The Committee was established under a directive of the Commissioner and so, in a sense, a group that is promoted and authorized by the authorities as a representative of the inmates. Reference may be made to Commissioners Directive No. 231, which deals with the purposes of such committee. I hope that the committee and other similar committees perform a useful function but I do not think that the existence of such committee makes any alteration in the rights of a group of persons to standing under s.33 (now 41) of the Coroners Act. The right of such Committee to standing at a particular inquest must still be determined by the presiding coroner in accordance with those provisions. "

Implication:

The status of an applicant for standing is not a determinant on whether he should be granted standing but whether or not he can satisfy the coroner that he has direct and substantial interest in the inquest.

ALDO ALVIANI INQUEST

Background:

The next decision on standing was handed down in November 1980. This concerns an inquest into the death of Aldo Alviani, a mentally retarded patient of the Queen's Street Mental Health Centre. Apart from the usual applicants for standing, professionals and ministries involved in the care of the patient, eight groups applied for standing through the voice of one counsel. Their applications were denied and the coroner's decision was challenged in Divisional Court.

Issues:

1. That the coroner erred in his jurisdiction to grant standing.
2. Is there a discretion after the coroner has found that the applicants are not directly and substantially interested in the inquest?

Issue 1:

Mr. Justice Galligan ruled that the coroner had acted judicially in reaching his decision as outlined in Brown v Patterson. I think he correctly charged himself that the application before him turned upon whether or not he found the applicants to be substantially and directly interested in the inquest. He heard full argument including the basis upon which the applicants claimed to be substantially and directly interested in the inquest.

Implication:

To reach a proper conclusion the coroner must address his mind to the two legs of the test after having had the benefit of a full argument from the applicants.

Issue 2:

He (the coroner) concluded that he had to turn down their application as indeed he must after obviously concluding that they were not substantially and directly interested in the inquest.

Implication:

This confirms what is left unsaid in the statute: that if the coroner finds that the person does not qualify for standing, then he must turn down their request. There is no discretion, once the decision has been reached.

Tema Conter Inquest

John Campbell, Larry Steele and Murray Adam v. Dr. Ross Bennett and Dr. Lynn Stewart and al v. Dr. Ross Bennett

Background:

These two applications for judicial review were heard simultaneously, The applicants had requested standing at the inquest into the death of Tema Conter. She had been assaulted, beaten and stabbed to death by Melvan Stanton, a federal inmate granted a 48 hours temporary pass to a halfway house by the National Parole Board. Campbell et al were the members of the Case Management Team advising the Parole Board. Dr. Lynn Stewart et al were the psychologists who had worked with Stanton during his incarceration and whose reports were used by the Parole Board, The application was dismissed following the principles first enunciated in Brown v. Patterson. Leave to appeal the decision of the Divisional Court was granted but the appeal was not heard following negotiations between the applicants and the Chief Coroner. The Chief Coroner decided to grant standing to some of the applicants because, in part, of the long delay that would have occurred had they decided to wait for the appeal to be heard. This delay would not have served the purposes of the Act because it was felt urgent that the circumstances of this unfortunate death be explored and that preventive action be initiated rapidly. In the end, only Dr. Lynn Stewart et al were granted standing. These psychologists could have normally expected standing as being professionals providing direct services to the murderer.

GILBERT MITCHELL INQUEST

S.C.O. (Barrie) Gray, J.June 2, 1988. unreported

Background:

This case followed the death of M. Gilbert Mitchell. This man was standing in his garage, at his residence. when he was struck on the head by a flying rock that had penetrated through the side of the structure. This flying debris was the result of blasting in a quarry near his home. The residents of the neighbourhood had already complained and presented a petition to their municipal council about three months prior to the accident. Also, a Ministry of the Environment investigator had responded to the complaint of a resident of the area and on December 1986, had monitored the noise and vibration levels from the blasting. A group of residents of this area applied for standing. This was denied. They applied for judicial review.

Issue 1:

That there was a reasonable apprehension of bias on the part of the coroner.

Court:

Application was dismissed in these words: "I find that there is no justification for the submission that there is a reasonable apprehension of bias on the part of the respondent."

Issue 2:

That they were directly and substantially interested in the inquest.

Court:

The applicants however have a somewhat stronger submission with respect to their claim that they are persons who under s.41(1) of the Coroners Act are "substantially and directly interested in the inquest." The applicants environmental interest may be substantial as was the case in the Millhaven Inmates. (Committee case Garrett, J. 1978;) but I cannot agree that the respondent by granting status to these Ministries has consciously made the matter one in which the applicants have a direct interest. This is the most important submission in this application bearing in mind the relatively broad language of s.31(3)3 of the Coroners Act. The direct interest is one in the inquest and the three Ministries may have such an interest because of s.31(1)(e)4 I find that there has been no error in principle demonstrated on the conclusion reached by the respondent and as stated previously the application is dismissed."

Implication:

This judgment acknowledged the fact that a common environment can create a substantial interest but that the test must stand on its two legs. The interest must also be direct to the applicant and does not become direct because a third party is granted status.

Zubresky Inquest

Background:

Michael Zubresky was a mentally ill inmate confined to a Super-protective custody unit, defined as a prison within a prison in the Kingston Penitentiary. This unit is unique in Ontario and Canada. He committed suicide on February 20, 1988. An inquest was called under Section 10(4) of the Coroners Act.

At the opening of the inquest the coroner granted standing to Kingston Penitentiary and the family of the deceased.

Standing was denied to applicant Larry Stanford who was acting as the officially elected range representative of the remaining twenty prisoners in the super - protective custody unit.

Application for standing by Mr. Stanford was sought on the basis that conditions at the prison, e.g. inadequate supervision and treatment may have contributed to Mr. Zubresky's death.

His application was on the following three grounds:

1. That the applicant and those he represents have a direct and substantial interest within the meaning of s. 41 of the Coroners Act and that the coroner was therefore obliged as a matter of the law to grant standing.
2. Alternatively that the Coroner in addition to the express duty in s. 41 had a residual discretionary power to grant standing which power should be exercised in favour of the applicant.
3. That the applicant's right to life, liberty and security of the person under Charter of the Canadian Rights and Freedoms s. 7 conferred a constitutional right to standing.

The applicant was seeking standing on behalf of the other prisoners on the basis that the recommendations which might arise from the inquest may have a significant impact on the few select inmates in the super-protective custody unit. His claim was based on the fact that each prisoner is confined for twenty-three hours a day with no opportunity for employment, treatment or the usual opportunities for rehabilitation open to ordinary prisoners. He claimed that inmates with severe psychiatric and psychological problems are regularly kept there for long periods of time, and that inadequate treatment and supervision leads to constant anxiety and occasional self mutilation and suicide. Prisoners may remain in the unit for years.

Application was made by Mr. Stanford to Divisional Court for judicial review of the Coroners ruling denying him standing. The same arguments were made before the court as before the coroner except for the Charter argument was placed before Divisional Court only to the extent that it might indirectly bolster the first two grounds (listed above).

A summary of case law with respect to this application was :

There is no appeal from the coroners decision on standing. The standard of review does not involve a power of a court to substitute its own view for that of the coroner on the basis only that the court, in the position of the coroner, would have reached a different decision. The standard of review of coroner's decisions on standing is a jurisdictional error.

Issue: Whether the application met the requirements of Section 41 (1) of the Coroners Act.

Coroner:

The coroner applied the private law approach that restricts standing to those who have a personal or pecuniary interest, or those whose conduct might be subject to implicit censure or criticism.

"I am not satisfied that the interest is substantial and direct. In that case I have no alternative but to deny standing."

Divisional Court:

The coroner erred in law in the interpretation of his jurisdiction to grant standing to a degree that results in jurisdictional error. The coroners reason for denying standing reflected the following serious errors in principle.

- (1) The test is too narrow a test, based on a private law approach which does not reflect the public interest functions of an inquest.
- (2) The test does not recognize the potentially crucial impact of coroners' jury's recommendations or measure the interest of the applicants in such recommendations.
- (3) The test does not reflect the legally unique position of the applicants whose situation is not merely similar to but actually identical with that of the deceased.

The private law approach fails to give effect to the dominant public interest function of the inquest which involves public scrutiny and recommendations of those conditions which may have contributed to or caused the death.

The recent recognition of the unique legal position of the applicants, emphasizes the uniqueness of their situation and the special nature of their interest in any recommendations regarding the identical conditions which are said to have caused or contributed to Mr. Zubresky's death.

I do not see how this unique group of prisoners has any less direct and substantial interest under this statute than the parents in Phase 1 of the Grange Inquiry.

The coroner applied the traditional narrow private interest test which failed to measure the unique and identical circumstances shared by the deceased and the applicant, which failed to recognize that the interest in such recommendations was so acute as to be direct and substantial.

The court made the observation that an inquest is not a trial, a Royal Commission or a public enquiry. It is not a platform for every busybody in search of one.

"The danger is not simply that of the busybody or the crank, but also the danger of sincerely motivated groups seeking a public platform for views that are not sufficiently relevant to the subject of the inquest and which will only result in undue delay and inefficiency."

Implication:

The private law test may not be sufficient in certain circumstance to determine whether an applicant has a substantial and direct interest in an inquest.

The coroner should look at the uniqueness and degree of interest of the applicant in the impact of potential recommendations to see whether or not it is so acute as to amount to a substantial and direct interest.

This is further qualified as follows: "Mere concern about the issues to be canvassed at the inquest, however deep and genuine, is not enough to constitute direct and substantial interest. Neither is expertise in the subject matter of the inquest or the particular issues of fact that will arise. It is not enough that an individual has a useful perspective that might assist the coroner."

It introduces the concept of stratification. That is an applicant may be treated differently with respect to disclosure etc. depending on the particular interest of the applicant. The concept of stratification was examined in later cases specifically Christopher Robin, Donaldson.

Issue: Residual Discretion

Coroner:

He did not possess the Residual Discretion to grant standing beyond the provisions of Section 41 (1).

Divisional Court:

One judge ruled that the coroner did possess residual discretion to grant standing and that this discretion should be used cautiously.

One judge ruled the coroner did not possess such residual discretion.

One judge deferred.

Implication:

The matter of residual discretion was not settled.

The official position is that due to the lack of reference to Section 2, residual discretion does not exist.

This is further developed in Donaldson.

Christopher Robin Home Inquest

BACKGROUND:

The Christopher Robin Home was a facility funded by the Ministry of Community and Social Services. Deaths in this home were not required to be reported pursuant to Section 10(2) of the Coroners Act. There was an agreement between the Ministry of the Solicitor General and the Ministry of Community and Social Services that all deaths in Schedule II facilities be reported to the coroner. All residents were mentally, emotionally and physically fragile. All were of paediatric age.

Deaths at a Schedule II facilities became a public issue after the Auditor General's report for 1989 indicated that there was a cluster of deaths at the Brantwood facility. The Chief Coroner requested a review of all Schedule II facilities.

At Christopher Robin in 1989 there were thirteen deaths, eleven of which had been reported to and investigated by a coroner. The two deaths not previously investigated were identified and assigned to a coroner November 30, 1990. There were two deaths in 1988, five in 1987, and seven deaths in 1986.

Arrangements were made to have the deaths at both Brantwood and Christopher reviewed by members of the Long Term Care and Paediatric Review Committees. Inquests were called into four deaths at Brantwood and fifteen deaths at Christopher Robin.

Early into the review of deaths at Christopher Robin a number of issues arose: apparent lack of consistency in medical treatment; apparent lack of physical examination prior to institution of medical care; possible inappropriate use of analgesics; apparent lack of protocols for consultation with outside medical agencies; apparent lack of consultation with the families; apparent lack of checks and balances in the medical management; apparent lack of checks and balances with respect to the Ministry of Community and Social Services; apparent lack of consistency in inspection of Schedule II facilities; possible lack of consistent provincial standards for these homes; and apparent lack of control by the local board.

Following the investigation pre-inquest meetings were held to define the issues. To prevent further deaths under the circumstances giving rise to the above issues an agreement was reached with Hospital for Sick Children Toronto for assessment and hospitalization of all children from Christopher Robin.

Standing at the inquest was granted to the Ministry of Community and Social Services; those families applying; Christopher Robin Home, the physician under contract to the home; and People First an advocacy group.

Counsel represented two families and was given disclosure of the medical records of his two clients deceased children. He was denied disclosure of the medical records of the other thirteen. He was also restricted from cross-examining on the details of the other thirteen childrens death.

People First asked for and was given standing on the basis of their interest in the recommendations. They were not given disclosure of any of the medical documents. People first were restricted from cross-examining on the details of each child's death.

Christopher Robin application to Divisional Court was made on behalf of People First for production of the medical records of all fifteen deceased and the right to call witnesses and conduct cross-examination on the specific details of the circumstances of each death.

Application was made by counsel for the two families for the remaining thirteen deceased medical files.

Application was made on behalf of a number of physicians to quash the decision of the Chief Coroner to direct Dr. Bennett to hold the inquest.

Brantwood:

Application was made by People First, Ontario Association for Community Living to :

- (a) compel the Chief Coroner to include those deaths at Brantwood not named in the inquest.

- (b) obtain access to the medical records of all the deceased both those who are named in the inquest and those who were not.

The Christopher Robin inquest began on May 13, 1991 and adjourned for the purpose of application on May 28. The Brantwood Inquest began June 10th.

Issue: Confidentiality of the Inquest Brief

The applicants to the judicial review wished to file the brief in the court.

Coroner:

Privacy of will-say statements, private medical records and background analysis reports provided to counsel on a confidential basis for the limited purpose of the inquest, should be maintained.

Divisional Court:

Privacy would be maintained. This was given orally on the first day. They would examine only the public record.

Issue: Power of the Chief Coroner to decide which deaths will be the subject of an Inquest.

Brantwood:

People First argued that the Chief Coroner erred in his decision to hold an inquest into four deaths instead of seventeen. They wished all seventeen to be the subject of said inquest.

Divisional Court:

It is not necessary to decide whether or not judicial review is available to the Chief Coroner under Section 25(1). There is nothing material before us to suggest that the Chief Coroner acted improperly, unfairly, or unreasonably in making the selection he did. Application dismissed.

Christopher Robin:

The doctors argued that the Chief Coroner erred in his decision to group the deaths on a common cause basis.

Divisional Court:

It has not been demonstrated that the Chief Coroner acted without jurisdiction. He decided on the basis of his medical review teams report. Common grounds were: common underlying disabilities; same residential institution; common medical and other care givers; all profoundly handicapped; all susceptible to infections; all required constant care; all died of a form of respiratory death; common use of morphine; non resuscitation; other factors.

This provided a rational basis for common cause.

The question for the Chief Coroner was whether there was an appearance of common cause, not whether the deaths occurred from a common cause.

The fact that other coroners had earlier not called inquests, does not prevent the Chief Coroner from re-examining and making a fresh determination as to the need of an inquest.

Appeal Court:

The decision of the Chief Coroner to choose certain deaths for review at Inquest must withstand scrutiny.

Evidence available must be able to meet the requirements of Section 25(1).

The better the investigation the easier it is for the court to decide this issue.

It is incumbent on the applicant to prove fault with the decision of the Chief Coroner to choose specific deaths for a particular inquest.

Issue: Power of a coroner to limit cross-examination with respect to Section 41(2)(c).

- A. Peoples First (Christopher Robin) argued that the coroner does not have the right in an institutional death to draw a line between the general social and preventive function interest of intervenors and the immediate and investigative interest of those personally and acutely connected to the deaths (family, care givers, institutional survivors).
- B. The families of the two children argued that unless they had full rights of cross-examination, all the essential evidence would not be brought out.

Coroner:

Made rulings denying People First from cross-examination of specific details of each death. Similarly the coroner allowed the families cross-examination on specific details in the two family deaths only.

Divisional Court:

There is a clear distinction in the statute between the investigative function and the social or preventive function.

It is clearly open to a coroner in a proper case to distinguish between degrees of direct interest by the various parties to an inquest and to limit the participation of each intervenor to the issues of fact vital to their particular interest. The question in each case is whether that can be done fairly in a manner which will not impede the orderly public presentation of all evidence essential to an understanding of each individual death.

Appeal Court:

Agrees with Divisional Court with respect to limiting cross-examination with respect to Section 41(2)(c).

Implication:

The coroner has both the power and duty to restrict cross-examination to matters relevant to the direct interest of the person represented.

The key to limited cross-examination is the definition of the Scope of the intervenors direct and substantial interest.

- B. The submission of the family was without merit based on the evidence. It was early in the inquest and it would be inappropriate to move for judicial review of an inquest on the grounds that all evidence might not come out when there is every indication it will emerge in a full, open and orderly fashion.

Issue: Disclosure

- A. People First argued that the coroner did not have discretion to deny persons with standing right of access to the full inquest brief. They were seeking disclosure of the medical records and any other documents given to other counsel.
- B. The families of the two children argued they were entitled to disclosure of the medical records of the other thirteen deceased children.

Coroner:

Disclosure to People First consisted of the medical summaries prepared by the medical review team. Disclosure to the two families consisted of their own deceased child's medical records and the other thirteen summaries.

The coroner was acting on the general principle that medical information should not be disclosed to others unless it was necessary for the inquest. He found that in this case it was not required.

Divisional Court:

This court upheld the coroner's ruling on disclosure. They defined the test as "the need for disclosure must be so acute and essential and superordinate in the particular circumstances that it outweighs the very strong presumption against disclosure to strangers of private medical information".

Appeal Court:

This court decided that in the particular circumstances of this inquest it was unfair to withhold that information from People First and the families. The failure of the coroner to give the medical records prevented the applicants from participating as they were entitled to.

Any breach of confidentiality could be solved either by an undertaking from counsel by appropriate deletions in the documents themselves.

Implication:

This ruling applies only to this particular case.

Coroners must decide on a case to case basis just what amount of disclosure may be appropriate to each set of circumstances.

Undertakings from counsel with respect to use of material disclosed can be restricted for the use in the inquest only.

Deletions may be made in records to protect the privacy of information not pertaining directly to the issues before the inquest.

Issue: Judicial Reviews (Unnecessary Intervention)

No application

Coroner:

No ruling.

Divisional Court:

Because of the delay; disruption; expense; inconvenience; and interference with the integrity of the process and the authority of the coroner to conduct an orderly and fair hearing, applications for judicial review while an inquest is in progress should be rare.

Appeal Court:

Agrees that it is undesirable to interrupt inquests for judicial review.

Issue: Stratification

Divisional Court:

Stanford/Harris

Traditionally "substantial and direct" was interpreted as being relative to the person who was deceased. Mr. Justice Campbell ruled that standing at inquests should be broadened to a person who had substantial and direct interest in the recommendations that might flow from the inquest. This broadening of the acceptable definition of standing was a reflection of the positive role that special interest groups might play in formulating recommendations.

Mr. Justice Campbell recognized that if special groups were to be given standing it would be necessary to carefully consider their participation subject to their particular interest.

Coroner:

With respect to Mr. Justice Campbell's decision, it was considered necessary to define the interest of each person with standing. Having defined the interest of People First as being only in the recommendations, the coroner limited the disclosure of specific details into all fifteen individual deaths. Having defined the interest of the two families, he limited the disclosure of specific details in the other thirteen individual deaths.

The coroner was applying a concept of "stratification of interest" as it arose from the Campbell decision. The coroner felt that the parties could participate fully in the inquest subject to their interest with the disclosure provided.

The coroner limited cross-examination of witnesses by both parties to the disclosure given.

Divisional Court: - (Christopher Robin)

In the judicial review of the subject inquest the court upheld the coroners interpretation of the Campbell ruling.

Appeal Court: (Christopher Robin)

The appeal court stated "It is at least arguable that Section 41(1) of the Coroners Act does not permit any degree of or stratification of standing and that the only limitation is the extent of cross-examination permitted under Section 41(2)(c).

Implication:

Disclosures is a procedural aspect of the granting of standing. It may be necessary to give full disclosure to persons with standing on limited interests. The right to restrict cross-examination does not correspond to the amount of disclosure made.

Issue: Legal Liability

The family claimed the coroner erred in not letting them ask a question about whether procedures fell below generally accepted practices in Ontario.

Coroner:

Disallowed the question under Section 31(3).

Divisional Court:

There is a fine line between questions that simply bring forward the facts and questions with legal content that invite findings of legal responsibility. That line has to be maintained by the coroner on a case-by-case and question-by-question basis. It is largely the question of the focus, wording and direction of each question.

Appeal Court:

We do not think it is necessary to rule on the instances where questions were deemed to be findings of legal liability.

Implication:

The coroners cannot run an inquest without the ability to judge whether a particular question crosses the line.

Judicial review has no value and no proper function in reassessing close judgement calls made by coroners on individual questions and lines of questioning.

Lester Donaldson Inquest

Background:

Lester Donaldson, a 44 year old black male with a long history of mental illness and interaction with the criminal justice system, was shot and killed on August 9, 1988 during an arrest procedure at his place of residence. Mr. Donaldson was out on bail pending a hearing into charges resulting from his last encounter with the police.

Following the death the criminal trial resulted in an acquittal for the Metro Police officer involved. During the trial it was established that Mr. Donaldson was in custody at the time of his death. This created a mandatory requirement to hold an inquest.

Following the acquittal the office of the Chief Coroner worked with the principle parties involved to look at options on how best to conduct the inquest. The option agreed upon by the participating parties (including the Attorney General) was to prepare a set of mutually agreeable terms of reference for a committee to study the issues of police interaction with mentally ill persons. A draft was produced to be presented to the jury at the inquest for their consideration. Failure to reach a final agreement caused this option to be dropped.

An inquest date was set for August 24, 1992. The Regional Coroner, Metro Toronto was designated as presiding coroner.

At the pre-inquest meeting the brief contained twenty-three volumes. The meeting was attended by six parties requesting standing. Submissions were heard August 24, 1992 and the coroners ruling on the applications was given August 26. Standing was awarded to the family, Ministry of Health, Police Complaints Commission, Metro Toronto Police Force, individual Police officers and individual physicians. Standing was denied the Black Action Defence Committee(BADC). The BADC filed notice of appeal for judicial review.

Subsequently the Urban Alliance for Race Relations (Toronto)(UARR) made application for standing September 1. The UARR were denied standing September 9. The UARR filed notice for leave to appeal for judicial review.

The BADC attended Divisional Court September 13, 1992 and attempted to file a large quantity of evidence in support of their application which had not been placed before the coroner. The court referred them back to the coroner who heard their new application September 10 and September 14.

In addition to their new application for standing Counsel for BADC argued a case of apprehension of bias on the part of the coroner and on the part of the Chief Coroner. The relief sought was to have a provincial judge preside at the inquest.

The coroner ruled that there were no reasonable grounds for an apprehension of bias and denied the BADC standing on September 22, 1992.

The issues were:

The coroner had erred in his jurisdictional duty by his failure to grant standing.

Whether public concern in itself established a threshold test for standing.

Whether a person with standing has the right to explore whether or not an issue exists without any facts to support the issue.

In reaching his conclusion the coroner had created a reasonable apprehension of bias.

The Chief Coroner in being a party to the proposed recommendations to the jury as noted above had created a reasonable apprehension of bias, which extended to all Ontario Coroners.

The coroner had residual discretion to grant standing over and above Section 41 (1).

The coroner ought to disclose the brief to persons seeking standing in order for them to prepare their submission.

The French version of the Coroners Act is significantly different from the English version with respect to the test for standing.

In addition the UARR submitted that they should be granted standing on the issue of cross cultural sensitivity in dealing with the mentally ill.

Issue: Race as a Contributing Factor in Mr. Donaldsons Death

The BADC's application was based on their assertion that Mr. Donaldsons race was a factor in his death. They argued that race as a factor laid a foundation for the involvement of his client. The BADC was formed in the wake of this death, they have been concerned with police community relations and represent the black community in the concerns raised by this and other deaths. Those concerns in and of the themselves were sufficient grounds for standing.

The UARR argued that they didn't know whether or not race was a factor but that public concern alone should be the threshold test for granting of standing and the exploration of the issue.

Coroners Ruling:

Race was not a contributory factor to the death. Therefore the issue was not before the inquest. Therefore there were no grounds for considering applications on that basis.

The coroners decision was based on the original O.P.P. investigation for the criminal trial, the criminal trial proceedings, a Police Complaints Commission report on the death, and an extensive O.P.P. investigation for the purposes of the inquest.

Divisional Court Ruling:

The coroner was correct in finding that race was not an issue and thereby denying standing to both parties on that particular application. There was no evidence to support the issue.

Implications:

1. It is proper for the coroner to be a part of the inquest investigation Team and be informed of all the facts.
2. It is proper for the coroner to decide the issues before the inquest.
3. The decisions of the coroner must be able to withstand scrutiny.
4. An inquest may not be an appropriate forum for allaying community fears, in the absence of fact to support those fears.

Issue: Cross Cultural Sensitivity

The UARR application for standing was based in part on the issue of cross cultural sensitivity. Cross cultural training in a multicultural society was an accepted issue in general police training. Counsel to the coroner indicated that one potential witness would say that cross cultural sensitivity ought to be one factor in dealing with the mentally ill.

Coroners Ruling:

Standing was denied, the UARR were informed on the record that if this issue did indeed arise in any significant way they would be granted standing with out further application.

Divisional Court Ruling:

The court described cross cultural sensitivity as a potentially significant issue and the UARR as having significant expertise in the area as well as the clear confidence of visible minority groups including the black community. This particular issue was not explored in any other hearing or court.

Standing was granted the UARR "to participate in exploring the issue of cross cultural sensitivity in police dealing with the mentally ill".

Implication:

1. Potential issues may be grounds for granting standing. (In order to qualify for standing a person does not have to have a direct and substantial interest into all the issues before an inquest). Whether or not the issue has been aired in another forum or inquest should be considered.

2. The courts decided it was the province of the jury to decide the significance of an issue.
3. This ruling leads to the issue of stratification:
 - A. supports the control of the process by the coroner.
 - B. The Christopher Robin decision applied only to that case
 - C. The issue of an applicants right to disclosure and if so under what circumstances was not decided in this case. Therefore the coroner retains the right to decide what is appropriate disclosure to persons with standing.

This was a split 2-1 decision with a minority decision describing cross-cultural sensitivity as not a significant enough issue to create a basis for standing.

Issue: Bias

The BADC placed an argument for bias on the part of both the coroner and the Chief Coroner during the second application for standing September 10, 1992. The UARR joined in this application at Divisional Court.

The case against the coroner was based on:

- (a) the coroner failed to allow race as an issue at the inquest because he prejudged the issue.
- (b) the coroner failed to recognize the BADC as the party to represent the Black community.
- (c) an affidavit concerning the conduct of another Metro coroner at an inquest into the death of another black person indicated a previous predetermination with respect to race as an issue.

The case against the Chief Coroner was based on:

- (a) his participation in the attempt to structure a committee to look at the area of police dealing with the mentally ill.
- (b) his alleged attempt to exclude the BADC in particular from the inquest process.
- (c) his alleged attempt to avoid a full inquest in open court.
- (d) the timing of the Donaldson inquest; connection of the Pakeman affidavit with concerns of race and the attempt at a proforma inquest into Donaldson.
- (e) the inquest coroner works directly for the Chief Coroner and works in close proximity to him.

Coroners Ruling:

An apprehension of bias did not exist and therefore he did not have to disqualify himself.

Divisional Court Ruling:

An apprehension of bias did not exist on the part of either the coroner or Chief Coroner.

The test applied was "what an informed person viewing the matter realistically and practically" would decide. This test is outlined in Committee for Justice and Liberty v. National Energy Board [1978] 1 S.C.R. 369.

Implication:

1. a coroner is not biased in a decision made on the basis of the facts before him/her.
2. a coroner is not biased on the basis of decisions made in accordance with the statutes guiding him/her.
3. innovation in the form of an inquest may be acceptable in the circumstances prevailing at that time.
4. inadmissible affidavit evidence may not be an appropriate form for submission in support of an application. (Dissent)

Issue: Disclosure of Inquest Brief

The UARR requested a copy of the inquest brief shortly before their appearance at Divisional Court. It was argued that a party seeking standing should be able to review the Brief prior to making its submissions.

Coroners Ruling:

The coroner denied the UARR disclosure of the Brief. The UARR were not granted standing and it has always been the practice not to provide disclosure except to those with standing.

Divisional Court Ruling:

The Divisional Court considered the issue of disclosure of the inquest brief prior to granting of standing but did not rule on it.

In this case "the parties consented to the lack of disclosure before making its submissions and thereby waived any right of access to this material that it might otherwise have had". There was no comment on what rights might exist.

Implication:

If a party requests disclosure prior to making application for standing, discussion should take place about what might be appropriate to disclose and under what circumstances that disclosure may be effected.

Issue: Residual Discretion

Both the BADC and UARR submitted that the coroner had a residual discretion to grant standing if a party did not meet the requirements of Section 41 (1). This was based in part on Stanford/Harris.

Coroners Ruling:

On the issue of whether race played a role in Mr. Donaldson's death the coroner stated "whether or not the right of residual discretion exists my conclusions before me, would be the same."

On the issue of whether the coroner would use discretion to allow the UARR standing on cross cultural sensitivity. "I do not have residual discretion in this matter. I therefore need not consider whether the Urban Alliance would meet the test of the criteria."

The test used by the coroner for whether Residual Discretion existed was

- (a) Stanford/Harris (Divisional Court) - one judge stated that without expressed words to the contrary he felt residual discretion remained with the coroner. One judge opposed the above - one judge abstained.
- (b) Beckon/Young (Appeal Court) "The legal basis of a coroners inquest is in the Coroners Act and it has no other basis. The common law component has been abolished, Coroners Act, Section 2(1). Having regard to its legislative history, it is not reasonable to interpret the Act as conferring any more powers, respecting inquests, than those prescribed by it."

- (c) Section 2 (1). Mr. Justice Campbell in *Stanford* did not refer to Section 2(1) and it is possible he did not advert his mind to it.

Divisional Court Ruling:

The issue of Residual Discretion need not be determined.

Implications:

1. Coroners do have considerable discretion in matters of Inquest procedure. [There are examples of tribunals reasonably defining the presence of "implied" statutory power in order to fulfil their legislative mandates. (*Huynh v. Jones*). There may be occasions where a power may be inferred as necessarily incidental to more general powers specifically conferred].
2. A Residual Discretion exercised by a coroner is not reviewable by the courts. "a discretion is for the coroner and not this court." "and that determination could not be the subject to jurisdiction challenge in the circumstances."
3. The coroner may deal with the rights of parties with limited substantive interests on a case to case basis.
4. The powers of a coroner to control the conduct of an inquest is upheld.

The official position of the office of the Chief Coroner is that Residual Discretion with respect to standing at inquest does not exist.

Issue: **The French Version of Section 41 (1) states that the criteria for standing is "considerablement ou directement"**

The UARR argued that since the French Version of the criteria for standing was the lesser test and that each version had equal status in law, that they were entitled to standing if they met either criteria of substantial or direct.

Coroners Ruling:

This was not argued before the coroner.

Divisional Court Ruling:

The UARR demonstrated a substantial interest in the Donaldson inquest (by reason of its expertise and community role in the provision of culturally sensitive mental health services.)

In particular, the public interest function of an inquest is an important underlying purpose of the statute which justifies choosing the less onerous French Version.

Regardless of the interpretative ramifications of the French text, I see no manifest error in principle in the coroners disposition of the BADC's application.

Implication:

1. Coroners will have to consider substantial and/or direct when reviewing the circumstances under which standing is being applied for.
2. In a clear conflict, the version to be selected should be the one most consonant with the context and purpose of the statute.

This ruling is included as a sample of how to define the limits of participation of a person who is being granted standing. Early definition of the scope of standing awarded may pay dividends in eliminating some arguments and rulings during the inquest.

Raymond Lawrence Inquest

Dr. Acheson's Ruling - April 7, 1993:

Good morning.

This morning, I'm going to give my ruling on the application for standing of the Black Action Defence Committee and my reasons for giving standing to the family of Mr. Lawrence and to the police.

In making my decision, I have carefully reviewed the submissions of counsel and the exhibits entered by them. I will not be referring to all of the points of each submission, but I assure you I have considered them.

The Coroners Act, Section 41.1, states that on the application of any person before or during an inquest, the Coroner shall designate him as a person with standing at the inquest if he finds him directly and substantially interested in the inquest.

The application made by Mr. Betty, as counsel to the mother and common-law wife and the children of Mr. Lawrence, meets the traditional private law test described in the case of *Stanford versus Harris*, page 155 of the thirty-eight administrative law report. And so, I granted standing to Estrianna Sawyers, Mitzi Morrison, Garth Lawrence and Monique Lawrence.

The application made by Miss Egan, as counsel to the Chief of Metropolitan Toronto Police, William McCormack, the Metropolitan Toronto Police Services Board, Police Constable Dora Pavlidis, and Police Constable Juin Pinto, also meets this traditional test in my opinion and I granted them standing, accordingly.

Section 42, 41.2.c., which states that a person designated as a person with standing at an inquest may conduct cross-examination of witnesses at the inquest relevant to the interest of the person with standing and admissible. Anticipates that a person with standing may have an interest in one or more of the issues of the inquest, but not necessarily all of them.

I find that the members of the family and the police that were granted standing had an interest in all aspects of this inquest and I have granted them standing on all issues.

Mr. Rosenthal, representing the Black Action Defence Committee, has brought an application for standing before me on four issues. The issue of race, the issue of the Special Investigations Unit, the issue of Article 790 of the Police Act, and the issue of police training.

Miss Egan, counsel to the police, made a submission that any difference between the decision facing Dr. Huxter in the Donaldson inquest and the decision facing me in the Lawrence inquest with respect to the application of the Black Action Defence Committee for standing is cosmetic, and I am, therefore, bound to come to the conclusion that Dr. Huxter came to and deny the Black Action Defence Committee standing.

With respect to Miss Egan's opinion, I do not agree that the circumstances are the same. Two investigations were done before the inquest investigation in the Donaldson case, one of which culminated in a public trial, and one of which was an investigation by the Police Complaints Commission. The facts of the death were before the public from the time of the trial.

In the case before us, there has not been a public trial or any other public hearing to reveal the facts of the death to the community.

The Divisional Court decision in the matter of the Urban Alliance on race relations versus Dr. Huxter has provided a new test for advocacy groups seeking standing at inquests.

On page 63 of the court file it states, "The Alliance's interest is substantial and direct given its almost unique expertise in a potentially significant issue and the fact that it represents a community having a direct interest in any preventive recommendations in this area."

The determination of all the potentially significant issues which might be part of this inquest is unnecessary in this hearing for standing. I simply need to rule on whether the issues of race, the Special Investigations Unit, Article 790, and police training are potentially significant issues.

On the materials before me, there is evidence that Raymond Lawrence was a black man shot by a metro police officer. After an investigation of the circumstances, the Special Investigations Unit laid no charges in this shooting.

The Metropolitan Toronto Auditors Report of September, 1992, entitles "The Review of Race Relations Practises of the Metropolitan Toronto Police Force", the report on race relations by Stephen Lewis for Premier Rae in June of 1992, and the order in council establishing the commission on systemic racism in the criminal justice system of October, 1992 persuade me that there is a possibility that systemic racism exists with the Metro Police and is providing a cause for black community apprehension and suspicion when a black man is shot by police.

In this case, there has been no form of public hearing into this death prior to this inquest. The commission on systemic racism will not be reviewing the circumstances of this death.

Section 20.B of the Coroners Act states that one of the reasons for the holding of an inquest is, "the desirability of the public being fully informed of the circumstances of the death".

To ensure that the public is fully informed, the question of racism should be asked and answered. In these unique circumstances, I am satisfied that systemic racism is a potentially significant issue at this inquest.

The way the Special Investigations Unit conducted their investigation and arrived at the decision not to lay charges was criticized by counsel for the family both at this hearing and during the investigation.

The mandate of the Special Investigations Unit and the implementation of that mandate with respect to this death may very well be part of a jury recommendation designed to prevent similar deaths in the future. I am satisfied that the mandate of the Special Investigations Unit and the circumstances of its investigation into this death are potentially significant issues at this inquest.

Article 790 of the Police Act deals, in part, with the use of firearms by police. Since this inquest is going to hear evidence that Mr. Lawrence was shot by a policeman, the Regulations governing the use of firearms are properly the subject of review by this jury.

Article 790 is a potentially significant issue.

When, and if, the potentially significant issues of systemic racism in Article 790 are found to be issues, the examination of the training given to police officers in these areas might help the jury to formulate appropriate recommendations. Accordingly, police training with respect to Article 790 is a potentially significant issue in this inquest and police training with respect to systemic racism might become an issue.

I turned to the materials filed by Mr. Rosenthal in order to determine if the Black Action Defence Committee has a "almost unique expertise", in the potentially significant issues I have named and whether "it represents a community having direct interest in any preventive recommendations in these areas".

A pamphlet distributed by the Black Action Defence Committee states their purpose is the elimination of racism within the police force, the judicial system, and all other major institutions in Canadian society.

Among the affidavits are letters to Dudley Laws from the Solicitor General, Mr. Allan Pilkey, identifying the Black Action Defence Committee as an interested party in their discussions about the Special Investigations Unit, and a letter from Mr. Justice Osler identifying the Black Action Defence Committee as an interested community group which he thanked for their role in strengthening the Special Investigations Unit.

Also in the affidavit material is a letter to Professor Benjamin from Mr. Griffiths of the Ministry of the Solicitor General thanking her for being part of the committee on Officer and Public Safety in the summer of 1992.

From these materials and the other affidavit material before me, I am satisfied that the Black Action Defence Committee has the support of the black community and that they have represented the black community interests in consultation processes with government on the issue of the Special Investigations Unit and firearms.

There were no materials before me dealing with any unique expertise of the Black Action Defence Committee with respect to police training.

I find the Black Action Defence Committee substantially and directly interested in the potentially significant issues of systemic racism, the Special Investigations Unit, and Article 790 of the Police Act, and the police training issues relevant to these issues. I find they possess almost unique expertise and represent a community having a direct interest in any preventive recommendations in these areas.

Accordingly, I grant the Black Action Defence Committee standing at this inquest in the potentially significant issues of systemic racism, the Special Investigations Unit, and Article 790 of the Police Act. I grant standing on the potentially significant issue of police training only where the training impacts on systemic racism, Special Investigations Unit, and Article 790.

In arriving at this decision, I had no need to consider the issue of residual discretion, and I did not do so.

The precise breadth and scope of the examination of the potentially significant issues which I have identified and for which I granted standing will be determined as the evidence unfolds in accordance with Sections 31 and 41 of the Coroners Act.

In *People First versus Porter* on page 620 of the five Ontario reports, the court reminds us of the balancing act before us, and I am going to quote, "While the public interest interveners can strengthen the Coroners inquest, it would be inappropriate for them to dominate the inquest by turning it into a Royal Commission or an Advocacy forum to advance the particular views of any group.

It must never be forgotten that the inquest is held because a member of the community has died under circumstances where the public interest requires examination from the point of view of the deceased person, their families and associates and those involved in the death. The social and preventive function is not the only function of the inquest. The interest of the families of the deceased and those dedicated to their care can never be forgotten.

The Coroner always has the difficult and sensitive job during the conduct of the inquest of balancing the requirements of the social and preventive function against the requirements of the investigative function.

The great value in the separate perspective of the public interest intervener does not warrant any usurpation of the role of the Crown Attorney as the overall advocate of the public interest in the role of counsel to the Coroner.

It is for Coroner's counsel to ensure that all the evidence essential to an understanding of the death is brought forward and the Coroner has an overall supervising responsibility to see this function is fully and openly performed.

Evidence presented to the jury must be relevant to their task. It must enable them to answer the five questions required for their verdict and to propose recommendations which might prevent a similar death in the future.

That's my ruling, Mr. Brown, do you have any submissions?

Inquest Court Etiquette

The purpose of a code of etiquette at an inquest is to protect the coroner from giving the appearance of partiality and to help protect his authority.

Attire and Demeanour

The coroner should dress conservatively to promote a neutral image. He should refrain from wearing pins or ribbons or other external signs that may indicate his support for a cause or group. Even if the connection to the inquest appears remote to the coroner, some party to the inquest or the press can suggest interpretation of bias. From the time that the coroner leaves his home to conduct an inquest until the conclusion of the inquest, he is subject to scrutiny by the media and indirectly by the parties interested in the inquest.

A formal attire also sets a more formal tone to the relationship between the participants and the coroner. This helps maintain the authority of the coroner.

The Courtroom

The physical set-up is also important in transmitting the message that the death of the person under investigation is considered important. It is a reflection of the community interest in the death of one or more of its members. As much as feasible an inquest should be held in a proper courtroom where a certain behaviour is already expected by the participants.

If this is not possible because of distance or because it is felt that holding the inquest in a different forum i.e. a School Gymnasium, where the message of the inquest will more easily reach its intended audience, then care must be taken that the physical lay out of the room resembles a courtroom as much as possible. This can be achieved by using a raised podium for the coroner and the witnesses, by the use of flags, and by having adequate security to insure that the audience behaves as it would in a regular courtroom.

During recesses, the coroner should refrain from appearing overly friendly with any one party and should refrain from making small talk with the participants. He should not talk to any lawyer alone. The Crown should always be present and except in rare cases all the lawyers should be present. Discussions in chambers should be kept to a minimum and should generally be put on the record once the inquest reconvenes.

The coroner should refrain from making jokes. This does not mean that he must sit there wooden-face. Smiling to the witnesses and to counsel when appropriate helps put people at ease and can defuse a potentially tense situation but jokes and puns done from the position of authority that the coroner has at the inquest can often be interpreted as put down or in bad taste given the subject of the proceedings.

The coroner's communications with the jury on matters relating to the inquest should be done on the record and from the bench. Housekeeping matters can be dealt through the coroner's constable.

Recesses and Adjournments

Again the coroner should be wary of not giving the impression that he has a particular relationship with some of the participants. He should retire to his chambers and any discussion should take place there. This will minimise the chance that he may be overheard and subsequently quoted.

Lunch break should be taken with coroners counsel and his entourage and away from the witnesses, the jury and the persons with standing. Care must be taken that the conversation does not become quotable.

The Media

We all recognise that without the media the message of the inquest is not as powerful and one should endeavour to satisfy the media requirements. This has mostly to do with their deadline for filing their stories. One should try and accommodate this and you will find that they will be grateful. On the other hand, the appearance of bias or partiality is a real concern and the coroner should refrain from becoming the spokesman for the inquest.

Once a coroner has been assigned to an inquest he should refrain from giving interviews except to state the facts leading to the inquest in a general way and the time and place of the inquest. This type of statement should be prepared in advance with the help of the investigative police force public relations department and/or with the help of the regional coroner. This original statement should also indicate to the press who should be contacted for further releases and possibly when they can expect more news.

The coroner should then take a back seat to preserve his impartiality and let his agent deal with the press. It has always been considered improper to second guess the jury before or during the inquest and to comment on their recommendations after the inquest in particular if the comments are critical of the verdict.

In summary etiquette and decorum at the inquest enhances the appearance of impartiality of the coroner and promotes his/her authority over the proceedings.

INQUEST MANUAL

- Printed Version

- * see Ministry of the Solicitor General,
Public Safety Division, Office of the
Chief Coroner... printed Inquest Manual,
Revised 1987 edition. Coroners Act,
Province of Ontario.....

Order of Questioning of Witnesses

This matter arises prior to each inquest, usually during the pre-inquest meeting. The coroner should ask the participating counsel to decide on an order of questioning and if they fail to do so by the start of the inquest he/she will impose an order.

Counsel :

Coroner's counsel normally examines each witness first. There may be situations where it would be advantageous for the process for someone other than the coroners counsel to examine first. (There a court decisions which allow for this in other jurisdictions.) Coroners Counsel also has the final opportunity to re-examine a witness.

There are many criteria that may be used to determine the order of questioning by counsel representing persons with standing. One usual way is to arrange cross examination in order of importance of the impact of recommendations on the persons with standing. It is usual to allow counsel for the family the courtesy of cross examining last. When one of the counsel is representing the witness being examined it is the usual courtesy to allow them to cross examine last, with the order of other counsel unchanged.

The same order is usually used for summation.

Some latitude should be allowed for deviating from the usual order in special circumstances.

Some coroners prefer to allow questioning by counsel only once. Many coroners allow for re-questioning by counsel representing persons with standing prior to coroners counsel re-examination. The decision in each particular case is made to ensure the inquest moves along as quickly as possible. The presiding coroner should decide in each case what the best option would be.

Coroner :

As per the Inquest Manual page 7 the coroner will ask questions following initial examination by coroners counsel. In controversial situation or where the coroner may wish to ask as few questions as necessary, it might be more appropriate for the coroner to ask questions only after counsel for those with standing and the jury have exhausted their questioning and before final re-examination by coroners counsel. The coroner may reserve the right to ask questions at any time.

Jury :

The Inquest Manual page 7 indicates that following the coroners counsel and examination of each witness the coroner and the jury will in turn ask questions prior to those counsel representing persons with standing. This is a normal procedure and usually works well.

In some inquest it might be advantageous for the jury to ask their questions after all counsel have finished. This should be an option open to the coroner.

As with counsel the jury should be given an opportunity if necessary of asking questions based on any proceeding that followed their initial questions.

Handling of Exhibits

Exhibits may be entered by coroners counsel or any other persons, agents or counsel. They are usually identified during the testimony of the witness speaking to that particular article. However, an article may be made an exhibit prior to or following the testimony of a particular witness. Relevancy is the key to allowing an article to be entered as an exhibit.

All exhibits must be readily available during proceedings and be made available to the jury during their deliberations.

The jury should not see or read any material prior to its admission by the coroner as an exhibit.

Following the inquest, summations, charge and the return of verdict by the jury and prior to having the coroner's constable read the proclamation ending the inquest, the coroner may wish to read into the record Section 52 (2) and charge the coroner's constable with such duty.

A form for disposition of exhibits following an inquest has been prepared and constitutes part of the inquest package.

Signing of Exhibits

There is no law which requires a coroner, crown or coroner or coroners constable to sign an exhibit. The requirement in law is that they be appropriately identified.

Appropriate identification would mean as a minimum; a numbering or lettering system in sequence; each exhibit be identified with a number or letter, and a separate sheet indicating that numbering or lettering system along with a clear description of that exhibit. In some jurisdictions the coroner routinely sign all exhibits.

The coroner should satisfy him/herself that the procedures used at the inquest are sufficient.

Order of Summations

The order of summations is usually the same order as questioning. Some deviation is permissible with agreement between the parties affected. It is not mandatory that a party with standing to make a summation.

The usual order is for the crown to give his/her summation after all other persons, agents or counsel and before the coroner.

The coroner is the last person to speak to the jurors.

If there is any objection to your summation as coroner or to the summation of anyone else, excuse the jury before hearing the objection. The jury can be recalled following the objection and corrections if required can be made at that time.

It is imperative that no new information or "evidence" is introduced during the summations or coroner's charge to the jury.

Coroners Charge to the Jury

s. 44 (1)

The coroner in his charge to the jury has two major functions to perform:

One; the coroner charges the jury with finding answers to section 31 (1) subject to subsections (2) (4) and (5).

The coroner should carefully review the evidence that is applicable to the requirements to answer these five questions. If contradictory evidence exists, or other persons, agents or counsel have suggested answers not in keeping with the evidence, the coroner may according to section 44 "comment on the weight that ought to be given to any particular evidence". Since the process of arriving at answers to the five questions fall well within the normal daily routine of coroners, the coroner may find him/herself in the best position to advise the jury.

Two; the coroner should ensure the jury is aware that they can make recommendations which might prevent deaths of a similar nature in the future, section 31(3).

This may be accomplished by supporting those recommendations already presented by witnesses agents or counsel; by coroners counsel during their testimony; or by suggesting recommendations of his/her own. It might be equally important to indicate to the jury those recommendations which might not be reasonable and practical; and which might not be based on the evidence.

There are a number of steps you can take to ensure your charge is accurate and fair.

- A. Extensive note keeping throughout the inquest as required.
- B. Review your notes and exhibits.
- C. Listen carefully to summations by other persons, agents and counsel.
- D. Listen carefully to coroners counsel.
- E. Give yourself reasonable time to write your summation or change your summation based on A-D above.
- F. Have your remarks written and avoid ad-libbing or providing additional remarks without carefully thinking about them.
- G. Do not invite comments or objections to your charge. If there are any, ensure you have given the jury to the custody of the constable and the jury has left the court room before hearing the objection.

Your charge should include as applicable:

- (1) Comments to the jury with respect to the important role they are playing. (An example of opening remarks are attached to this section).
- (2) Caution the jury with respect to Section 31 (2) and ensure that the jury clearly understands that it is their verdict and that they should reach it on the basis of evidence heard from the witness box and the exhibits given them for their review. They must understand that a submission by counsel, coroners counsel or the coroners is not evidence.
- (3) Direct them to their functions of answering the five questions and if applicable of making reasonable and practical recommendations.
- (4) Review as necessary the evidence available to them to answer the five questions.
- (5) Review as necessary the comments, conclusions and recommendations in counsels' summations including coroners' counsel.
- (6) Review as necessary the evidence you feel leads you to suggest your own recommendations.

The Appeal Court in the case of Beckon/Young ruled that it is inappropriate for a coroner to ask a jury to write a narrative under By What Means. The jury may be instructed/requested to group certain recommendations with an explanation or to provide a brief explanation following each and every recommendation to assist the reader an understanding why the recommendation was made.

Use of Subpoena

Subpoena's are normally used by the coroner to summon witnesses and materials to the inquest. The coroner is the only person involved in the inquest with subpoena powers.

Some considerations are:

- > give as much notice as possible
- > advise the witness that the actual time required for appearance may change, the investigating officer shall confirm the time prior to the appearance of the witness
- > discuss unusual needs with the Regional Coroner:
 - example: subpoenas for justices, government officials etc..
- > when serving summons inquire as to any special needs of the witness
- > in the case of hospitals may be more efficient to serve all subpoenas to the CEO or, in the case of a large company or agency to an individual designated to undertake to serve those within the company

Occasionally you may get a request for a subpoena from other persons, agents or counsel. Sometimes persons willing to testify on behalf of a person with standing has restrictions place on them by employers. The Chief Coroner feels that it is appropriate to use subpoena power if it will facilitate the proceeding of the inquest.

However, you and coroner's counsel may require an undertaking with respect to financial obligations, the materials which are to be supplied by the witness and the timing of the witnesses appearance. The coroners system should not incur any responsibility for costs unless the witness is required by the coroner's counsel. The coroner should be cautious about supplying a subpoena in this manner and may wish to discuss it with the Regional Coroner.

If you are unsure about the use of subpoena power at any time, please call your Regional Coroner or the Chief Coroner's Office.

Verdicts

Jury's verdicts should be hand written or typed on the Verdict of Coroners Jury form which is supplied by the Chief Coroner's Office. Forms for continuation if the verdict or recommendations are also available and should be used.

Receipt from Jury

The verdict when handed to the coroner should be scrutinized for violation of Section 31 (2) and 31 (3). Many experienced coroners have their counsel also read the verdict before accepting it. If there is any doubt call a recess and discuss it and seek any assistance you might wish.

In long complicated inquests it may be necessary for the coroner and coroners counsel to review the verdict prior to receiving it in court in order to ensure compliance with Section 31 (2), and to prevent the necessary delays and inconvenience to everyone if there is a problem with the verdict. Coroners counsel should inform all other counsel when this might be necessary and seek other counsels consent in order to avoid later conflict.

In either case if there is some problem, request the jury to reconsider their position and to reword any offending wording.

If they remove the offending wording, accept the verdict. If they do not comply with your direction and the verdict continues to violate Section 31 (2) you must invoke Section 31 (5). If you find your self in this position contact your Regional Coroner before taking this serious decision.

Following receipt of and reading the verdict you may wish to:

- (1) charge the constable on record to comply with Section 52(2), with respect to returning exhibits to their lawful owner or to those entitled to possession of the exhibits.
- (2) thank the jury and those involved in the inquest as applicable.

Verdict Explanation

It is normal for the coroner to write a Verdict Explanation and forward it together with the verdict to the Regional Coroner.

This explanation should clarify some of the evidence, explain why certain parties were given standing, add to the By What Means, and explain why certain recommendations were made. The explanation should assist those addresses to whom the verdict is forwarded in responding to it.

The verdict's clerk in the Chief Coroner's Office has a reasonable expectation that an explanation will be coming with every verdict. When this does not occur it causes undue delay in sending the verdict out.

Immediately following the inquest the explanation should be written and forwarded with the verdict to the Regional Coroner. If yours is one of those rare cases in which an explanation is not required, or if it is going to take sometime to complete and will be sent later, please so indicate to the Regional Coroner when forwarding the verdict. This valuable information will be forwarded by the Regional Coroner to the Chief Coroner who will advise the verdict's clerk as to the appropriate handling of the verdict.

Media

In the Courtroom

Inquests are public hearings and the media may attend all sessions including voir dire. There are some rules which apply to the use of cameras, tape recorders and video equipment during an Inquest.

- A. In Court rooms run by the Attorney General.

Cameras and video equipment will not be allowed in the courtroom.

Tape recorders may be allowed to record proceedings. These recordings are to be used only by reporters to assist them in the accuracy of their reporting. They may not be used for direct broadcast or any other use.

- B. Coroner's Courts in Toronto.

- C. Inquest proceedings in other than A or B above, e.g. hotel rooms etc...

The same rules apply for cameras, video equipment and tape records as in B above (Coroners Courts in Toronto).

Members of the media may not conduct interviews with jurors or witnesses or any other person within the confine of the court so designated.

Any action taken outside the aforementioned areas by members of the media with respect to photos, recordings or video is their business and not that of the coroner. All suitable precautions should be given the jurors and witnesses as required.

It may be necessary at times to remind the media and the public of the above rules A, B, & C.

Disclosure to Media

i) Prior to Inquest:

Inquests are open hearings. The media can play a significant role in bringing the issue before an inquest to the general public, and in informing the public of the results of an inquest. Prior to holding a particular inquest, public notification is made to enable the various media to decide whether or not they will cover it.

At the beginning of an inquest (page 6, Inquest Manual) the jury is cautioned to disregard anything they may have heard or read previously when considering their verdict. This is not a slight against the media but an attempt to have the jury consider as full and as balanced a picture as possible based on evidence given under oath and subject to cross-examination.

Therefore, one could consider that the public good is not being served, with respect to the inquest by giving early disclosure to the media.

Disclosure to the media should occur through witnesses and exhibits as the inquest proceeds and not prior to the inquest.

ii) During Inquest:

Disclosure to the media during an inquest would probably centre around obtaining a copy of an exhibit. In this case the coroner would have to consider:

- a) whether disclosure should be made on request
- b) whether disclosure should be made following the inquest
- c) whether or not third party interest might outweigh disclosure
- d) whether the article requested might be changed to allow for disclosure

Your coroner's counsel and your Regional Coroner can advise you in your deliberations.

iii) Following Inquest:

If a request for a sensitive item is made during the inquest and agreement can be reached on what is to be released, the time can be used to delete those facts which are not part of the inquest or extract the relevant items required from the exhibit.

Otherwise the considerations remain those of (ii).

Interviews

The coroner should not make statements to the media concerning the issues or conduct of the inquest. It would be improper for the media to expect a coroner to comment on a process or evidence when he/she is presiding.

It is left to the individual coroner to decide if it would be appropriate to give an interview following the inquest.

Juries often ask the coroner if they should allow an interview. They should be informed that they are not bound by law to give or not give an interview and that it is strictly an individual decision. If they do, it might be inappropriate to comment on the process used during deliberations.

Daniel Beckon Inquest

Background:

Dan Beckon was a jockey who had two previous episodes where he failed formal drug screening and was removed from riding for specified periods. Just prior to his death he failed a third drug screen the consequences of which may have meant a long removal from racing in Ontario. On the day of learning of the third positive drug test, July 2nd, 1987, he was found dead in an abandoned barnyard some distance from but in line of sight of his home. He was lying near his pickup truck. He had partially fallen across a 22 rifle and he had a single bullet wound in the right temple. The truck was locked and inside the cab among other things was a "suicide" note. The rifle had been borrowed months before by Dan Beckon. A single shell casing was found near the left front tire of the vehicle.

The investigating coroner registered the death as a suicide. An inquest was called to look into the issue of mandatory drug testing. The central issue at the inquest became whether Dan Beckon committed suicide or was murdered.

The jury found that Dan Beckon committed suicide.

Following the inquest the widow of the deceased made application to Divisional Court, and eventually Court of Appeal challenging the proceedings which led to the verdict of suicide and asking for the verdict to be quashed.

The issues were:

1. That suicide is a conclusion in law and therefore not a verdict available to the coroner.
2. If suicide is available as a verdict then there is a bias against suicide and the test for it should be beyond reasonable doubt.
3. The verdict of the jury should be quashed because of bias in the charge on the part of the coroner.

Issue: Standard of Proof

The applicant claimed the burden of proof should be beyond a reasonable doubt and instructed the jury in his summation to apply that test.

Coroner:

In Ontario inquest verdicts have always been decided on the basis of balance of probability, as are all civil cases, boards, tribunals. The jury was so instructed.

Appeal Court:

A finding of suicide is a gravely serious one and this must be addressed in the charge to the jury.

The standard of proof required for a verdict of suicide is not proof beyond a reasonable doubt, but proof to a high degree of probability.

The court suggested an appropriate wording for the burden of proof.

Implication:

The standard test of balance of probability is not a sufficiently high enough test for suicide.

This implication is defined by the Chief Coroner in Memorandum A-609 July 20, 1992 appended to this section including specific wording to be considered in an address to the jury.

Issue: Presumption Against Suicide

The applicant claimed there was a presumption in law against suicide.

Coroner:

This was not argued before the coroner.

Appeal Court:

I think that the presumption against suicide should be referred to in a charge to a jury.

Implication:

Coroners would have to inform juries with respect to this presumption against suicide.

The court suggested an appropriate wording for the presumption against suicide.

This implication is defined by the Chief Coroner in Memorandum A-609 July 10, 1992 appended to this section, including possible wording.

Issue: Murder and Suicide Verdicts

Coroner:

It has been accepted practice for coroner's juries to bring verdicts of suicide or homicide.

Appeal Court:

Neither suicide or attempted suicides are offenses. A finding that a person committed suicide is not a finding of "legal responsibility". Intent is a part of the meaning of suicide but I do not think that the word expresses a conclusion in law. The use of the word suicide here does not contravene Section 31(2). Homicide is not a conclusion in law.

Implication:

Intent will have to be stressed to juries for their consideration when deliberating whether the By What Means of a death was suicide. Wording is suggested in memo A-609.

Homicide is a proper verdict but murder is not as it is a conclusion in law.

Issue: Narrative (in Inquest verdicts)

Coroner:

It is proper for a jury to write a narrative under By What Means, to create an audit trail of the evidence used by the jury to reach their conclusion, and lay the ground work for any recommendations which might follow.

Appeal Court:

There is no proper basis for a jury to write a narrative. The legal basis of a coroner's inquest is in the Coroners Act and it has no other basis. The common law component (Section 2(1)) has been abolished. Having regard to its legislative history, it is not reasonable to interpret the Act as conferring any more powers respecting inquests than those prescribed by it. (See Ontario Law Reform Commission's Report on the Coroners System in Ontario 1971 at page 35).

Implication:

Coroners may not instruct jurors to compose a narrative in their verdict.

This implication is defined by the Chief Coroner in Memorandum A-609 July 20, 1992 appended to this section. Specific wording for instructing juries re recommendations is suggested.

Issue: Bias

Coroner:

Not argued before the coroner.

Appeal Court:

(Not formally before the Divisional Court in the first instance). Despite the good intentions of the coroner, the forceful statement of the coroner's opinion of suicide reasonably gives rise to the view that the jury had not been instructed in an impartial and judicial manner.

Implication:

Section 44 of Coroners Act states "the Coroner may comment on the weight that ought to be given any particular evidence". A coroner in charging a jury must not state his or her own conclusions regarding the evidence. To do so would go beyond instruction and amount to a direction to the jury.

This complication is defined by the Chief Coroner in Memorandum A-609 July 20, 1992 appended to this section.

Huynh Inquest

Background:

The deceased was a 31 year old male who was killed at his workplace on September 8, 1989. The deceased was repairing an extrusion press when he was caught by a conveyor belt and dragged through a small opening in the press. He was pronounced dead by paramedics through a Base Physician.

The inquest into his death was first convened on December 14, 1989. Although the deceased's family were kept informed of developments and attended the pre-inquest meeting, they did not wish to seek legal counsel and attended the inquest representing themselves. Following the first morning of testimony the family approached the coroner stating that they could not possibly continue and would like time to seek legal counsel. The coroner granted an adjournment. Due to court scheduling difficulties the inquest was not resumed until June 11, 1990.

At the resumption of the inquest on June 11, counsel for the employer requested an adjournment because charges had been laid against his client and four of its officers and employees under the Occupational Health and Safety Act - RSO 1980 c. 321.

After hearing submissions from all counsel the coroner discharged the jury and adjourned the inquest until the charges had been dealt with.

Application was made on behalf of the family, now represented by counsel, to Divisional Court for judicial review of the decision of the coroner to close down the inquest, and to discharge the jury. This application was heard before Divisional Court and in a written judgement released on February 21, 1991 the court found that the coroner exercised his jurisdiction reasonably and sensibly.

The inquest was again started on October 21, 1991 and completed on October 25. Following the acceptance of the verdict, counsel for the family laid a complaint before the Ontario Human Rights Commission claiming that comments of the coroners and recommendations by the jury were inappropriate and violated the Ontario Human Rights Code on February 19, 1992.

The complaint was based on

- A. The coroner repeatedly referred to "racial and cultural" differences as well as language differences between the workers. In the coroners view these differences created communication problems which contributed to the fatality.
- B. The jury's first recommendation: - "offer to applicants who lack the basic English language a probationary period of 3 months. The 3 months probationary period will include the following: the applicant will work alongside with a qualified English speaking employer and the applicant will attend a basic English course paid for by The Company".

The Regional Case Co-ordinator, Ontario Human Rights Commission found that a Coroner's Court does not fall within the jurisdiction of the Human Rights Commission. Legal opinion obtained by the Regional Coroner agrees with the Regional Case Co-ordinator. This opinion goes further in that it states "The jury's recommendation regarding English Language instruction, in and of itself, is not a violation of the Human Rights Code of Ontario".

Issue: The coroner's right to close down an inquest in the absence of criminal charges

The family argued that

- a. The coroner did not have the jurisdiction to close the inquest or discharge the jury in the circumstances of charges under the Occupational Health and Safety Act.
- b. There would be reasonable apprehension of bias if the inquest was resumed before the same coroner.

Coroner:

The law is not clear with respect to civil cases being stayed because of a parallel criminal prosecution. There is no case law in support of what should be done in an inquest when there are charges under the Ontario Health and Safety Act. The penalties in this case are so severe that one might well state that they are equivalent to criminal or quasi-criminal charges.

From the perspective of the family, there will be no ill effect on them if potential recommendations are made now or later.

From the perspective of the company, the concern I have is that the core issues of the inquest are exactly the issues of the charges laid by the Ministry of Labour.

From the public perspective, the safety concerns with respect to these machines have been met.

Divisional Court:

The coroner did have jurisdiction under Section 46 to adjourn the inquest and he had the necessary incidental power, considering the length of the adjournment, to discharge the jury.

Section 27 does not by implication exclude the power and duty to protect the process of the inquest.

The coroner did not err in exercising his discretion in preventing the use of the inquest process for a collateral purpose. Inquiry into Civil Rights (McRuer) 1968 v. 1 p. 492.

The coroner considered all matters he was obligated to and entitled to consider and exercised his jurisdiction reasonably and sensibly.

There is no reasonable apprehension of bias in the proposed manner of proceeding fresh by hearing again the witnesses who had already testified before the jury was discharged.

Implications:

Section 46 may be extended to include adjourning an inquest for the purpose of avoiding have the process used as a discovery for charges under the Occupational Health and Safety Act. Adjournment by consensus would be a preferred method. In either case a record should be created with a clear indication of the coroners considerations after a careful review of all aspects of the adjournment.

Excerpts
Panel Discussion
1989 Continuing Coroners Education Course
(Full Text is available)

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Coroners Role in Inquest Investigation

Let's begin with the role of a coroner in the investigation that precedes an inquest. The initial investigation has been completed, the coroner makes the determination and announces publicly that there will be an inquest. How active should the coroner be in speaking with potential witnesses and dealing with all of the problems that arise?

Mr. Justice O'Driscoll

The role of the coroner seems to be evolving and it is my view that the more controversy that is involved in a particular inquest, the more the coroner should stand back from the inquest investigative proceedings. If the coroner has been very active in the investigation, someone is going to get to the view that the coroner is supposed to be acting in a quasi judicial role and may be something less than objective. Section 16 (4) provides the coroner with all that he or she needs for investigative purposes and my advice would be to leave it to those people to interview the witness.

Dr. J. Young

When someone calls and has a question or query regarding the scope of the inquest or what witnesses might be required, it has become my practice to refer the person to the Crown Attorney. Justice McRae, would you like to comment on that and on any other features of this question?

Mr. Justice N. McRae

The Crown Attorney has a statutory duty as well to act as Counsel to the Coroner. He/she is the one who should work with the police to coordinate the evidence as it is being prepared, all under the supervision of the coroner.

Dr. J. Young

Do you see a parallel between the way a coroner's investigation and inquest is set up and a Royal Commission in the sense that a Royal Commission is called and the investigators go out under the authority of the Commissioner and gather the evidence in the same way we do in an inquest?

Mr. Justice McRae

I think it is almost exactly the same. The Crown Attorney is Counsel to the Coroner and he/she is there to advise him and assist him, and he and the police are experienced in this. They are the ones to do it.

Disclosure

Dr. Young

Prior to an inquest, we advocate a fairly free disclosure of information. On occasion after disclosure has taken place there have been leaks of substantial amounts of information. In one instance, a family were handed an autopsy report and then promptly left and gave it to the Toronto Star. It appeared in an article in that paper and then there was speculation as to the meaning of this particular autopsy. What would your views be in regards to disclosure and the need for securing an undertaking?

Mr. Justice McRae

There should be as much disclosure as possible prior to the inquest. This gives the appearance of fairness and actually expedites the inquest once it gets started. Counsel should undertake not to breach the security prior to the public hearing. If a lawyer does, breach the undertaking, you can report him to the Law Society of course, the Law Society could discipline. It might amount to contempt. The section in the Coroners Act covering proceedings includes the statement if someone "does any other thing that would, if the inquest had been a court of law having the power to commit for contempt, have been contempt of that court". (Sec. 51 (c) The Division Court can punish for contempt if they do anything deliberately to obstruct or pervert the course of an inquest.

Dr. J. Young

Would you recommend that an undertaking be taken in writing and should the security be breached, what would your recommendation be?

Mr. Justice O'Driscoll

Make them sign an undertaking and make the terms of it specific as to what they can and cannot do with the material. Assuming that he or she is a lawyer if they breach it send it to the Law Society. It is unprofessional conduct to breach an undertaking. If there are names of witnesses and addresses that you have fear for their safety, of course, that is another matter, but I think you would have to take your advice on that from the police officer involved as to whether or not anyone may be at risk on that.

Pre-Inquest Meeting

Dr. J. Young

What do you think the role of the Coroner and Crown Attorney should be at the pre-inquest meeting?

Mr. Justice O'Driscoll

At the pre-inquest meeting the coroner should be more or less the Chairman of the meeting and simply let people have their say. I wouldn't get involved in any controversy or give any idea what his or her views are on the issues to be decided at the inquest. Let the Crown Attorney deal with an exchange of Will Says and whatever is going to happen. You get a smooth flowing inquest if you have the fullest disclosure possible and at the pre-inquest meeting the Coroner sets the tone of what is going to happen, what people have standing, what is going to happen at the inquest and what the order of the witnesses is going to be. If someone wants standing and he is not sure, say, "You will have to come and argue it out when we start the inquest". Generally, the Chairman of the Board for the meeting is my view of what the Coroner's task is at that stage.

Dr. J. Young

If there is some debate I let the Crown and various counsel debate and come to a solution. If a decision is needed I make it on the record at the appropriate time in the court. Would you agree with that and have anything further to add Justice McRae?

Mr. Justice McRae

Judicial restraint at the pre-trial hearing is important so that there is no appearance of bias on behalf of the Coroner, and no suggestion that thing were said that didn't get on the record later. Try and keep everything on the record.

Dr. J. Young

So you would not advocate the Coroner opening the meeting by saying, "I have called an inquest into this death and my agenda is to get recommendations in a,b,c,d, or e areas".

Mr. Justice McRae

I think I would be very careful before I would do that.

Role of Family at Inquest

Dr. J. Young

One of the difficult areas is the role of the family at an inquest. Are the family's interest different or greater than any other party? Are there different rights or are they equal once the hearing begins?

Mr. Justice McRae

They are equal except the family situation is fraught with emotion in many cases. I think they have to be handled more delicately. I think the practice has grown up that the representative of the family, whether it is counsel or one of the people, is entitled to cross-examine last.

Dr. J. Young

If a witness has a lawyer and his lawyer is present, my own practice is to let that lawyer examine last. The family lawyer would immediately precede that lawyer. If it is a witness that no one is representing, I let the family examine last and I acknowledge in essence a bit of a special right in that regard.

Mr. Justice McRae

I think that is practical.

Mr. Justice O'Driscoll

What about the address to the Jury, do the family figure into that order?

Dr. J. Young

I generally allow the family to go last and then ask other counsel to arrive at their own order. If they can't then I make up an order for them. I try to figure out who has the most at stake and allow them immediately before the family and then in decreasing order. Do either of you have any suggestion? Counsel to the coroner is actually last before the Coroner.

Mr. Justice O'Driscoll

What about re-examination? Do you let the lawyers re-examine?

Dr. J. Young

Generally I let the lawyers re-examine. There are those that argue that by doing that you lengthen the proceeding. I think the first time around fewer questions are asked because everyone isn't worried it is their only chance to ask anything. It is a two edged sword, you can win and lose with it, but I think generally allowing the re-examination works better. What would your view be?

Mr. Justice McRae

We do that in trials but we limit them in re-examination very dramatically.

Voir Dires

Dr. J. Young

Legal matters might arise and one of the counsel will ask for a voir dire. The Coroners Act says nothing about voir dire. What would be your view as to whether or not a voir dire is a good idea in an inquest?

Mr. Justice McRae

It depends on what is being discussed. If you are talking about something that may turn the inquest around or be of great prejudice to someone, I would be inclined to do it. On the other hand, it lengthens the inquest. Perhaps one way around it, when you ask the Jury to leave say to the lawyer, what is this all about. The lawyer may tell you in a few short sentences what it is about and it may be capable of ruling very quickly. Don't get mired down in voir dire. The Court of Appeal have said that the fewer we have the better, because sometimes you lose sight of the forest for the trees when you get into voir dire after voir dire. It is a judgement call in each case.

Dr. J. Young

If the request for a voir dire about the admissibility of certain evidence, would that be a situation where you might not want the Jury to hear that.

Mr. Justice McRae

That is a precisely the situation in trials but it is a different ball game when you are trying an accused, particularly in a criminal case. It is absolutely vital that evidence which is inadmissible not be heard by the Jury. If the Jury hears an inadmissible statement then the whole trial is wiped out and you have a mistrial. The rules of evidence in a Coroner's inquest are so much broader and practical that I can hardly envision a case where you should have a voir dire. I hate to think of a Coroner's inquest turning into mini trials. I think some of the lawyers would probably try to do that but it is just going to lengthen and complicate things unduly and I would certainly resist it if I were you.

Dr. J. Young

You should only have them only if they are about quite serious matters. My experience is that having excluded the Jury, the arguments turn from a few minutes to often a few hours. You'll find it might not speed things up at all, the arguments might become endless.

Exclusion of Witnesses

One common call by lawyers is for exclusion of witnesses. Would you like to comment on that?

Mr. Justice O'Driscoll

Under Section 50, subsection 1 of the Act it says, "A coroner may make such orders or give such directions at an inquest as he considers proper to prevent abuse of its processes." I think there is discretion to order the exclusion of witnesses in the interest of justice. As a rule, Coroners do not exclude their own witnesses but sometimes the lawyers voluntarily exclude their own witnesses. An inquest is open to the public. The Jury decides the question of credibility. On the other hand, if there is a great test of credibility between witnesses 1,2, and 3 is it right to let them all sit there and hear each other, or is the Jury going to get a better perspective of the whole thing if they testify in the absence of each other. It is a discretionary call and if no one presses I would just leave the witnesses in. If somebody presses for the exclusion then you are going to have to make a judgement call.

Dr. J. Young

Is it within the Coroner's power to exclude witnesses?

Mr. Justice McRae

Yes, it is within the discretion of the Coroner to do it. I wouldn't hesitate to do it if it was a proper case. Sometimes it is necessary to safeguard the truth.

Dr. J. Young

One of the things that has been done is to come to an informal agreement with the lawyers that each will exclude certain witnesses until a certain point in the proceeding and without an order the parties voluntarily agree to not enter the room.

Mr. Justice McRae

The best way to do it is get an agreement like that but I wouldn't hesitate to order them excluded if you think it is necessary to preserve the integrity of the process and to safeguard the truth.

Mr. Justice O'Driscoll

Anytime you can get the people with standing before you to agree to anything, get it on the record it saves a lot of problems later.

Judicial Review (Threats)**Dr. J. Young**

"I don't like your ruling, I am going to Divisional Court". What does the Coroner do when the lawyer says that?

Mr. Justice O'Driscoll

If it is a question of standing under Section 41, then I suppose in the interest of fairness, you should stop. Is this person going to be given standing or not going to be given standing? What happens if they keep making these threats and you adjourn and they don't do anything? If it is a lawyer who is in a snit because the Coroner wouldn't let counsel cross examine the witness about the witnesses' fathers income tax I wouldn't be too excited about the threat. The other possibility is that you can have both going on at the same time simultaneously. The counsel wants to call witnesses who deal in the Coroner's view, extraneous matters with regard to Section 31, Subsection 1, and the Coroner says "no" and Divisional Court is threatened. Perhaps the inquest can proceed and be adjourned after all the witnesses have been heard and to be resumed after the Divisional Court decision. In any event, if and when, papers are served, stop the inquest because your jurisdiction may be deemed to be suspended while the proceedings are going on in Divisional Court. The next question is what happens if the papers are served and the whole thing is a complete hoax. What you, the coroner can do, is stop the proceedings and say to your counsel "please go to the same Divisional Court forthwith and get me an order from a Judge that I should proceed". Then you protect yourself and you protect the process while it is going on.

Dr. J. Young

If someone is threatening to go to Divisional Court put on the record that you expect them to seek a ruling as quickly as possible, before a single Justice and get some commitments as to what they will do and within what time frame before you agree to adjourn.

Mr. Justice McRae

It depends to some extent on what the issue is they want to take to Divisional Court. It also depends on the merit as you see it of their application. I agree somewhat reluctantly with John O'Driscoll that you should stop the proceeding once you are served with papers requesting a case for Divisional Court. I know that in one of the Royal Commissions that I was on, we were served with an application to apply to Divisional Court for a ruling with respect to a specific witness but we just dropped that witness and moved on with the balance of the enquiry, and I think it is technically possible to do it in a Coroner's inquest as well. Divisional Court might take a dim view if you go ahead and answer the question which is directed to them to answer. There is a case in the Supreme Court of Canada dealing with a trial situation that Justice O'Driscoll was actually involved in that says the Provincial Judge should immediately stop once a case has been referred. So I would say, once you are served with the papers, don't proceed any further.

Dr. J. Young

If it seems like an idle threat wait until you are served, but if it is genuine, be very careful about proceeding. You may prejudice the rest of the hearing if you go ahead.

Contempt of Court

What would constitute contempt of court?

Mr. Justice O'Driscoll

Disobeying, flaunting, ignoring the lawful orders of the Coroner regarding the conduct of the inquest, or counselling others to do so, refusing to answer relevant questions, refusing to produce relevant documents, giving interviews with the media before or during the inquest that accuse the people in and at the inquest of bias, prejudice, whitewash, cover-ups, etc. abusing verbally, or otherwise, the Coroner or anyone at the inquest. Sometimes these things are used as bait to goad the Coroner, and you may wish to ignore it. Exclude the Jury and point out to the culprit the powers that you have under Section 51 of the Act to state a case to the Divisional Court for contempt, there may be an apology and a promise not to let this happen again. If necessary prepare your stated case and have it served, sometime before you charge the Jury. It may well be heard after the verdict but my recommendation would be that you have it served before the Jury renders its verdict. I would have the service done in such a way that the Jury doesn't know anything about it and if the person served chooses to go to the press then that is his or her problem not yours.

It could be argued that your jurisdiction to state a case came to an end with the Jury's verdict. Lawyers do not want to put themselves in a position where they might be threatened with contempt. Usually, with a little diplomacy, you may be able to sweet talk these people into behaving themselves. Threatening contempt every time somebody does something that causes you displeasure just weakens and takes away the value of the ultimate weapon.

Cross-Examination

Dr. J. Young

What can the Coroner do to limit cross-examination?

Mr. Justice McRae

Section 50 says that a Coroner may make such orders or give such direction as he considers proper to prevent abuse of the process in the court. A Coroner may reasonable limit further cross-examination that the cross-examination of the witness has been sufficient to disclose fully and fairly the facts.

A witness can be cross examined directly on the matters at issue and also as it affects his credibility. It is fundamental to the art of cross examination that the credibility of the witness be tested. If the witness has given a previous inconsistent statement counsel should be entitled to put that to them. You have to give them scope to test the credibility of the witness by putting suggestions to them which may prove that their recollection isn't as accurate as they pretend it is or that they have said something different on a previous occasion. That is something you have to call on a case by case basis. It is usually the unknown that causes problems. There is nothing that can quell problems quite as much as anticipation. So if you anticipate today that something is going to happen about 10:00 or 11:30 tomorrow morning, you can be ready for it and you can diffuse it before it happens.

If you read through the law reports dealing with Judges' ruling that went the wrong way, according to the Court of Appeal, they were made late in the afternoon when everybody was tired. If you have one of those you can buy yourself some time and put it over.

You can have a look at it overnight and maybe discuss it with Coroners Counsel as to what the legal aspects of it are.

Dr. J. Young

You can rule that it is unduly repetitious or that you have the power to control the situation?

Mr. Justice McRae:

Absolutely.

Dr. J. Young

What about when one of the counsel points out that it is the right to only cross examine subject to the relevance of the person with standing, and attempts to limited another lawyers examination by saying, "This might be outside the bounds of that particular clients interest". "Do you have comments in that regard"?

Mr. Justice O'Driscoll

Limiting cross examination is a very difficult thing. The lawyer may say, "This goes to the witnesses credibility". If you ask "what has this to do with the jury's task under Section 31 (1) of the Coroner Act?" and he can't answer your question in that regard, I think you would be justified in saying it is not relevant. If the lawyers says, "If you just bear with me a few moments Mr. Coroner, I think I can show you the relevance". Then he proceeds to unearth the fact that the witness has been convicted 6 times of perjury, that is very relevant, although it doesn't necessarily have anything to do with the particular Section 31 (1). If you have a witness who has been previously convicted of perjury one or more times, is the jury going to believe anything he says? So you have to take it on a case by case situation.

Dr. J. Young

You would not take the narrower view that people can only cross examine within very narrow limits of their clients interest?

Mr. Justice O'Driscoll

That is what Section 41, subsection 2c says, but I think the task of a Coroner trying to cut it that fine is impossible.

Legal Advice from Counsel

Dr. J. Young

Let's deal with where there is an argument and the Coroner receives advice from the Coroners Counsel that he doesn't agree with.

Mr. Justice McRae

Counsel for the Coroner is in exactly the same position that Counsel on a Royal Commission is. It is an investigative process and he is there to assist and advise the Coroner. The Crown should cooperate in every way. In fact, they have a statutory duty to cooperate by the Coroners Act. They are designated as Counsel to the Coroner and I think you would have no difficulty getting them brought up short if they become recalcitrant. Dr. Young was telling us about a case where a Crown Attorney said, "I don't want to hear any more witnesses". In fact, the Coroner called some more witnesses and the Coroners Counsel wouldn't question them. That is totally improper behaviour and he misconceived his duty. On the other hand, they are experts in an area where you aren't.

Dr. J. Young

In a major disagreement the Coroner and the Coroners Counsel should get together behind closed doors and agree on a course of action with ultimately, the Coroner making the final determination as to what that course will be.

Mr. Justice McRae

That is put very well and very succinctly.

Dr. J. Young

Having argued a point in court should the Coroner have any problem saying, "I don't agree with the Coroners Counsel here."

Mr. Justice McRae

You shouldn't have any problem with that, it is the Coroner's responsibility to make judgements not the Coroners Counsel.

Dr. J. Young

There is the danger if the Coroner is seen as allowing the Coroners Counsel to run the inquest it can cause real problems.

Mr. Justice McRae

I think that would create a wrong impression in the eyes of the public and I think you try to avoid that. The Coroners Counsel should be sensitive to that too.

Dr. J. Young

If everyone, including my own Counsel, has argued a point and the Coroner then says "I have to consider my position and make a ruling" it has been my practice to have nothing further to do with my Counsel at that point in time. If there is a point of law I have got to have advice on, I make it known to all the other lawyers that I am going to ask my Counsel within the narrow limits of that point, a question, but I am not going to have Counsel advise me further or write my decision.

Mr. Justice McRae

It would probably be a good idea to say that on the record, so there is no suggestion that the two of you are getting together.

Getting Along With Difficult Lawyers

Dr. J. Young

There may be a situation when a Coroner develops a personal dislike for one of the lawyers. How would you handle a situation like that?

Dr. Justice O'Driscoll

It happens every day. A British Judge, Mr. Justice McGarry has said, it is easy for a Judge to be indifferent, as between litigants. The difficult thing is to be indifferent, as between the lawyers.

There is no doubt that some lawyers will aggravate you. Sometimes the lawyer is doing it deliberately and sometimes it is just his or her way. Don't lose your cool. Do not get into give and take situations with a lawyer that is of that ilk. Let the lawyer say his or her piece on such occasions and when you think they have wound down, you say, "Have you finished?" Then you make your ruling and you do not allow any re-argument of the same issue. Once you rule the matter is over.

Do not reflect any nastiness that may be directed your way. Treat it all as though this happens to you every day at every inquest. Be fair, be firm and give the appearance of being fair and firm. Remember, the client dead or alive is the one that cannot be allowed to be hurt in this real or apprehended inviting. Take the high road.

Dr. J. Young

I think that advice about handling lawyers is good. The interesting part of it is that if he is getting to you, he is probably getting to the jury as well. My inclination is that the jury aren't used to the proceedings and it may take a little longer for that particular lawyer to bother the jury. So I will give them a little more leeway at the beginning and then increasingly come down on the lawyer later.

Mr. Justice O'Driscoll

I recall a particularly difficult trial some years ago. After it was all over, I received several letters from the jurors saying they knew what I was enduring during the course of the whole thing. Although nobody said anything in front of them, they certainly didn't think too much of the lawyer and they said they knew exactly what was going on. When people do these things, they are not engendering any favour with the jurors.

Calling of Witnesses by Persons With Standing

Dr. J. Young

When a person with standing wants to call evidence and they refuse to discuss the evidence with the Crown or to let anyone know what might be coming it leads to the problem of trying to decide whether the evidence is relevant to the proceeding. How would you handle a situation like this?

Mr. Justice McRae

The Coroner has a wide discretion to admit matters in evidence. A practical suggestion would be to find out the substance of the evidence from the Counsel or the party that wants to produce it. If it is clearly outside the scope say "it seems to me it is outside the scope of the inquest" and make a ruling it is inadmissible. If it is questionable I would probably let it in rather than exclude it.

Dr. J. Young

Would you exclude the jury at that point?

Mr. Justice O'Driscoll

I don't think you necessary have to put the jury out for that. I suppose if you did it you would be on the safe side. At this point in the inquest you have watched the lawyer and know how he or she operates. It may be appropriate to put the jury out.

Dr. J. Young

A witness may start making statements that aren't contained in the will say statement, speculate and name names. I had that situation occur where a witness was on the stand and being examined by her lawyer was asked a question then suddenly said that x, y, z, were all massive drug users. X, y, Z, were all people well respected in the community and these allegations were based on hearsay and unfounded. It was out of her mouth so quickly that everybody sort of sat there with their mouths open. The next day 6 more lawyers showed up asking for standing at the inquest and we had a real donnybrook. How do you deal with that situation when somebody just suddenly starts expanding on their evidence and perhaps implicating other people?

Mr. Justice O'Driscoll

If you can anticipate this type of activity or conduct from a witness, excuse the jury and give a lecture to the witness. Tell the witness to listen to the questions that are being put to him or her, understand what is being asked and just answer the questions. Point out to the witness how unfair his or her conduct is and ask them if they would like having some witness saying things about them when they weren't present to defend themselves. If the witness refuses to follow your directions, you may have to tell the witness your powers to apply to the Divisional Court for contempt proceedings. [I would immediately tell the jury to disregard it as though it was never said.]

Dr. J. Young

I had a recent experience where a witness was insisting that he wanted to name someone as a cocaine dealer and it wasn't relevant to the proceedings. I refused to hear his evidence at that point in time despite the fact that he was insisting. I informed him that he had to consult with a lawyer or get some legal advice before he did what he was intending to do and warned him that anything he said outside the courtroom could mean that he spent the rest of his life working for someone else because of the civil suit. He got legal advice, came back the next day and told us that his lawyer told him not to get into the areas he was intending to. In that instance, we could see him building towards that direction.

Recently, in the Marshall inquiry I noticed that one of the witnesses made certain statements about some of the Justices that had heard the appeal. It can happen in Commissions, in inquests and in court. Justice McRae, do you have anything to add?

Mr. Justice McRae

I would be inclined to have the jury there while I told the witness what I thought about the weight of the evidence and what he was saying was improper. You are going to have to warn them to ignore it, so you might as well leave them there while you warn him.

Mr. Justice O'Driscoll

If you have someone who is just busting to get a name out give them a pen and let them write it, and then put it in an envelope and seal it. You don't necessarily let it go to the jury. It might diffuse the whole thing.

Enforcing Conduct of the Public

Dr. J. Young.

How do you handle unruly people in the body of the court?

Mr. Justice O'Driscoll

Section 9 subsection 1, and more particularly, Section 47 and Section 50, subsection 1, gives to the Coroner the power to keep order at the inquest and to call police officers to remove people. Whether it is a Coroner's inquest or a court, we don't like to get involved unless we have to point out to those assembled that they are all welcome as long as they behave themselves and keep silent. If they refuse to do so, you will have no hesitation in ordering the person or persons removed who are disrupting the proceedings. Utilize Section 47 and get a police officer to remove the person. Act swiftly and don't be afraid to turf out the trouble makers and any who are aiding and abetting them.

Dr. J. Young

Do you want to relate that story you told us the other day about the school class that came to your court.

Mr. Justice O'Driscoll

I was in Hamilton some years ago at a rape case. The conviction had taken place and I went back some 2 weeks later for the sentencing. There was a class from one of the high schools in court. Submissions were being made and in the middle there was a hissing sound went through the courtroom and it had obviously come from someone in this class. I stopped the proceedings and I said, "Would the person or persons who did that like to identify themselves". Nobody stood up and I said, "One more chance, if the person or persons do not identify themselves, I am going to put the whole class out, now you choose". Nobody chose to identify themselves and I put them all out. You have to do things of that nature otherwise you are going to have people shouting or hollering and carrying on, and it will not have the decorum it should have.

Mr. Justice McRae

Your own conduct and your demeanour can have an effect on keeping order in the court. It is a question of having the right sense of discipline yourself and if you show respect to them and firmness in your rulings, you will get the same respect back.

Dr. J. Young

I had a lady make comments and then charge out of the room slamming the door behind her. In that instance, I sent the investigator out to talk to her and to see whether or not there was something she had knowledge of that was upsetting her and whether she might have something to contribute. In this instance, she was misinterpreting what she was hearing. He calmed her down and she returned and was good the rest of the day.

Questioning by Coroner

What would be your advice in regards to the Coroner's questioning? When should the Coroner question and how involve should the Coroner get?

Mr. Justice McRae

I think I would let everybody ask all the questions they want and I would only interfere if there was something that hadn't come out that should have come out. The inquest is a fact finding inquiry and you have a duty to see that all the facts come out that should come out. I wouldn't put questions unless there was something essential that was not asked.

Dr. J. Young

So you would question last and question little. Do you agree with that?

Mr. Justice O'Driscoll

If there is confusion, or if there are some salient points that have not been brought out then ask the questions. What I do in fairness, is turn to the lawyers and say, "Do you wish to ask any questions arising out of what I have just asked?" I think the watch word in all of this is 'restraint'.

Out of Court Conduct

Dr. J. Young

You earlier alluded to the fact that one of the signs of "contempt of court" might be that lawyers were making inappropriate statements outside the courtroom. How much would you allow where interviews are being granted and matters are being discussed outside the courtroom and how would you deal with the objections in the inquest to other lawyers having done that?

Mr. Justice O'Driscoll

If the inquest hasn't started, do you have any control over them at all, I am not sure.

Mr. Justice McRae

They could be in contempt if what they say outside court tends to pervert the course of the inquiry. Certainly after it starts you could refer them to Divisional Court.

Dr. J. Young

Where a lawyer raises the issue that Mr. X is out on the street granting interviews and saying that my client isn't telling the truth or whatever, the Coroner may have a role to play.

Mr. Justice McRae

It would have to be designed to pervert the course of the inquest, prejudice the jury or something like that. I don't think you would have much control otherwise. If I were the Coroner I wouldn't say anything outside the court either.

Dr. J. Young

What would be good advice in regards to the Coroner's own conduct, who he speaks to and who he doesn't?

Mr. Justice O'Driscoll

It seems to me that the Coroner should take the lead and show the way by saying to the media, he doesn't have any comment or "Come to the inquest and you will hear all the relevant evidence", or "I am not at liberty to discuss the matters that will be properly aired at the inquest."

If you acquire a reputation as being tight lipped after awhile I don't think the media will bother you. If you acquire a reputation of being always ready with a quotable quote, you will have no peace and you may spend a lot of time with 'hoof and mouth' disease and attempting to extricate yourself from hot water. Where some Coroner seeks media attention, he or she is doing a disservice not only to the office but to his or her colleagues.

Dr. J. Young

In Commissions, what would be the role of the person hearing the case, with the media, parties involved, and lawyers outside the court room.

Mr. Justice McRae

Royal Commissions are completely open, they are telecast routinely. Nothing was ever said outside of courtroom outside of the hearing. We didn't even tell them who the witnesses were going to be. They had to be there to hear them themselves. The Commissioners view always was that you will see report Coroners are under a lot of pressure, especially in high profile inquests, to make comments. The media are always there trying to get some news but I would not say anything.

Dr. J. Young

We had a recent problem where a Coroner had chatted to someone outside of the courtroom about one of the witnesses concerning an unrelated matter. This was perceived by one of the other parties as something to do with the inquest and it had been unfair. It can be innocent and yet it can be badly perceived.

Mr. Justice O'Driscoll

Under Section 44, subsection 1 it ends up by saying, "and the Coroner may comment on the weight that ought to be given to any particular piece of evidence". If the Coroner lets it drop in the local restaurant at lunch hour what he thinks of this witness or that witness, it seems to me that he or she may have lost some of their credibility when it comes to commenting on the weight of a particular piece of evidence.

Summations

Dr. J. Young

How does the Coroner deal with an address to a Jury by a Counsel where they think the Counsel has gone right off the beam?

Mr. Justice O'Driscoll

If Counsel is misstating the evidence, if Counsel tells the Jury not to pay any attention to the Coroner when he speaks to you, or Counsel engages in theories that have no basis in the evidence then I would interrupt. [To interrupt a Counsel in full flight is very devastating to say the least and he or she may end up not remembering what their name is at the time of the interruption.] You as the Coroner have the last word. Perhaps it could be handled without interrupting by simply keeping notes and straightening it all out when you charge the Jury. It is a judgement call. I think it has to be very bad before you cut in.

In the Morgentaler case that went to Supreme Court of Canada in 1988, the Defence Counsel said to the Jury, "You have a right to say that the law should not be applied." The Supreme Court of Canada said he was wrong that he should never have said that. It amazes me the trial Judge didn't interrupt him. That is the type of thing for which Counsel should be interrupted.

Mr. Justice McRae

You can correct a misstatement in your own address to the Jury or if it is more critical, as soon as Counsel sits down.

Dr. J. Young

How far can the Coroner go in his or her final address to the Jury in regard to the Coroner's own opinion of the evidence?

Mr. Justice O'Driscoll

The Coroner's duty is to separate the wheat from the chaff when it comes to the evidence and to simplify and synthesize the Jury's task. However, a Coroner must remember to tell the Jury the inquest is conducted to obtain their verdict, their recommendations, and not that of the Coroner. Therefore, they are to act on their own findings of fact and that the Jury has the sworn duty to cast aside the Coroner's views, open or veiled, if in fact they do not coincide with the Jury's views of evidence. I think you can be forceful but certainly let them know it is their view of the evidence that matters.

Mr. Justice McRae

I agree. The Statute gives you a wider scope to make those comments than Judges have. It is anticipated that you will, and you have the professional expertise. I think it is important that the Coroner gives the Jurors some idea of his/her view of the evidence.

Dr. J. Young

Should the Coroner ask if there are objections to his charge to the jury? Following that, what do you do if there are objections?

Mr. Justice O'Driscoll

We look at it from the standpoint of a trial Judge, when we finish charging the Jury we always ask the Counsel for their objections, if any. I gather the Coroners so do not necessarily invite such objections. If you come to the conclusion that you are going to follow the practice, you listen graciously with a common demeanour about all these things that are being said about your charge to the Jury that you worked so hard on. Make notes, listen to what is being said and when one side is finished, ask the other side for their comments, what objections they have and comments with regard to the objections that you have already heard. If there is validity in what has been put to you. I would suggest you call the Jury back and make the corrections. Tell the Jury that this re-charge or whatever terminology you want to put on it, is not to be taken as any underlining of anything, it is to be taken in the whole of the charge. If there is not validity, so state and that is the end of it. Don't be stubborn. Sometimes a few minutes of a re-charge can straighten a lot of things out.

Dr. J. Young

Justice McRae, do you think it is necessary to invite objections, or do you think you would send the Jury out and if someone wants to object they will stand up or make it known.

Mr. Justice McRae

I certainly wouldn't invite Counsel to make objection to my charge. If Counsel does stand up and object, you have to listen to him of course. I wouldn't call a Jury back unless you have really neglected to say something you should have said.

Dr. J. Young

The Jury may over interpret the fact that they have been called back. Is that what you are saying?

Mr. Justice McRae

Yes, caution the Jury not to put any undue emphasis on what you say when you call them back.

Accepting Verdicts**Dr. J. Young**

When receiving the verdict on one of the primary things that the Coroner must do is decide if it is a legal verdict. The term in the Act is "must not make finding of legal responsibility or conclusions in law". It has often been said, "We can't find fault". Is that the same thing as finding fault or are they two different things?

Mr. Justice McRae

They are different. There is almost a contradiction in Section 31. They are mandated to determine who the deceased was, how he came to his death, when he came to his death, where he came to his death and by what means. If finding by what means he came to his death requires a finding that the death was caused by something or some person, then you are finding fault. There is a fine line. If they make findings of fact without fixing specifically legal responsibility or conclusion of law, then I think they are within their mandate. Otherwise, they could breach this section and it would be an improper finding.

Dr. J. Young

The Jury in writing a narrative might have to accept or reject various persons evidence. The jury may write they think the following items are fact, that so and so went to such and such a place, and that this led to the death. As long as they have not said that someone was legally responsible or cross that line that is well within the range. It is difficult but I think it is reasonable to ask a Jury to do it if the verdict is going to have meaning. Do you have any problem with that interpretation, Justice O'Driscoll?

Mr. Justice O'Driscoll

I think it is a fine line. If the Jury in their narrative write that the deceased was killed by a car travelling south on University Avenue at 115 miles an hour, obviously, unless there is some robot in the car, somebody is behind the wheel. They are not pinning legal responsibility or expressing any conclusion in law. Homicide is the act of one human being causing the death of another human being by any means. Because it is a homicide doesn't necessarily mean it is culpable or blameworthy, it can be non-culpable and it doesn't necessarily mean they are expressing any conclusion of law. If they say that A murdered B, then that is an improper verdict.

Dr. J. Young

I have accepted verdicts of homicides in cases where it was simply making the finding. Do you have any problem with that?

Mr. Justice McRae

No.

Dr. J. Young

How should the Coroner deal with either objections to the verdict or request to poll a Jury? Do you have any suggestions?

Mr. Justice McRae

There is no provision in the Act for polling a Jury. I don't think it is practical because it is a majority verdict and it is in the form of a report, like a narrative. You could just say, it just can't be done under the Act.

Dr. J. Young

How would you deal with objections to the verdict? Someone claiming it was an improper verdict?

Mr. Justice McRae

That is something you have to deal with. It is a decision you have to make as a Coroner, whether or not it is an improper finding pursuant to Section 31. I think you would take submissions from everybody and make up your own mind on it. If it is over the line, tell them you can't accept that verdict and send them back to correct it. If they don't correct it discharge them.

Dr. J. Young

Would you hear the objections with the Jury not present?

Mr. Justice McRae

Yes, I would send the Jury out for that one.

Conflict of Interest

Dr. J. Young

How does one deal with a situation where there is the allegation that a lawyer has a conflict of interest and therefore, should not be allowed to represent two parties within an inquest. Does the Coroner, in your view, have any role to play in ordering people to seek separate representation and separate Counsel?

Mr. Justice McRae

I don't see anything in the act that gives you that jurisdiction. A lawyer who is in a conflict of interest situation has a duty as a member of the Bar to reveal that conflict, and he could be in serious difficulty. What do you think Justice O'Driscoll?

Mr. Justice O'Driscoll

Why does the Coroner get into being the arbitrator of that situation if the clients are happy? How is it that somebody else can say to the Coroner, order them to go and do this. On the other hand, it may be obvious to the Coroner that there is a conflict and under the general provisions of the Act the Coroner could say, it would appear to me that you have a conflict and I am not sure you should represent either one of them.

Dr. J. Young

I could see that situation arising where a lawyer does have a conflict. The solution, rather than say to the people they can't have that lawyer, is to say to the lawyer that I won't grant you standing to represent them. Make sure the parties don't decide that we are ordering them to get separate Counsel and the Ministry of Solicitor General will pay for separate Counsel. Have either of you any suggestions about streamlining the process? Anything that seems obvious to you that we haven't discussed today that would make inquests flow faster.

Mr. Justice McRae

Keep a firm hand on the process. You have the statutory jurisdiction to do that. Don't allow Counsel or anybody to vary from the issues. Be firm in your rulings. Try and sit consistently. People who keep breaking and taking recesses tend to stretch things out and the lawyers come back with more and more questions. Set rules when you are going to sit and stick to your schedule. Keep everybody honest by getting back into court promptly. Keep everybody within the bounds of the relevance that your dealing with.

Dr. J. Young

It can make an amazing difference if you finish a witness between 4:30 and 5:00 or you let things go over to the next day. The next day will turn into a half a day on occasion and yet at 4:30 or 5:00 or 5:30, the same thing is done in half an hour.

When the lawyer does not attend the pre-inquest that lawyer may come to the inquest and attempt to change things around. I take a very dim view of that, and usually I am not very apt to change. If they don't think enough of the process to show up and make the arrangements originally then I don't allow them to come and change everything at the last minute.

Dr. James G. Young
Honourable Mr. Justice J. O'Driscoll
Honourable Mr. Justice N.D. McRae

Revision
January 11, 1993

J.G.J. O'DRISCOLL

March 6, 1993

2:00 p.m.

ONTARIO CORONERS' SEMINAR
CHESTNUT PARK HOTEL [MANDARIN ROOM]

"HOW A JUDGE CONDUCTS HERSELF/HIMSELF IN COURT
AND THE PROCESS TO BE USED IN MAKING RULINGS".

Mr. Chairman, Ladies & Gentlemen.

The Chief Coroner telephoned me early in February of this year. While discussing the weather, he casually slipped in the request: "Wouldn't you like to speak to the corners on the afternoon of March 6, 1993 on the topic of "How a Judge Conducts Herself/Himself in Court and the Process to be used in Making Rulings"? Without the benefit of counsel and not realizing what I was doing, I agreed. We talked about other matters. He said that a letter would follow; and then, we said "good-bye".

After hanging up the receiver, I suddenly realized what I had done. The usual state of panic took over and I quickly asked myself:

1. Why did I agree to do that?
2. Is there any way that I can get out of it short of a heart attack?
3. What am I going to say? Where do I start?

When the smelling salts had done their work and the hysteria had subsided, I read the Chief Coroner's letter and I decided that the best I could do was give to you a pot-pourri of ideas and suggestions; some "do's" and some "don'ts". What follows are:

- (a) Things that I was told to do and have always done.
- (b) Things that I was told to do and have usually done.
- (c) Things that I have been told not to do.
- (d) Things that I wish someone had told me to do.

As you are aware, each trial judge is a unique human being. Some would argue that each trial judge is a unique prima donna. However, each judge sees things from his/her peculiar perspective. Therefore, what I am about to say emerges from a perspective based upon my experience of some 20 years plus as a judge and from being around courtrooms for some 40 years. Another judge would, no doubt, look at things a trifle differently. As we judges say - "ask 6 judges for their views on a given topic and you'll get at least 9 opinions".

I have never sat as a coroner, so I cannot speak from that perspective. However, presiding with a jury, no matter the name on the door, produces a certain number of common denominators. May I suggest that you utilize my remarks in so far as you feel they may assist you in your duties as a presiding coroner.

For a few minutes, let us look at the judge from three (3) different angles:

- (a) The judge that you see;
- (b) The judge that you hear; and
- (c) The judge and his/her rulings.

A. The Judge or Coroner that you see

1.

It has been said that a judge sitting on the dias is like a swan - above water, all is placid and serene while below the surface of the water the swan is paddling non-stop with all its might.

That is an apt comparison.

At a seminar some years ago, I heard the late Chief Justice Laskin being asked: "What's it like being a judge?" The late Chief Justice answered: "It's like looking through the wrong end of a telescope".

It's also true that familiarity often breeds contempt. When you come into the courtroom and while in the courtroom, there should not be any actual or figurative backslapping or handshaking nor "how are you today Charlie". Don't act like a politician who is about to "work the room" even if all present were your classmates at university or high school. Nor do you come into the courtroom, sit down and say "Good morning everyone".

Maintain an austere air.

Your presence should bespeak authority. Simply by looking at you, everyone should know and realize that you are in control; you are the captain of the ship. You are not first mate, you are not playing second fiddle. You are in command; it is your hand that is on the tiller.

Your movements should be deliberate, but not dramatic or contrived.

2. As you sit and listen to the evidence, you should sit up straight. Don't slouch, or turn your chair sideways so that you can put your feet up on an adjoining chair. Don't yell or scream. Don't mutter. Don't make facial gestures. Don't roll your eyes to signal disbelief. Don't nod your head up and down to signal your belief. Don't throw down your pen in disgust. You don't announce: "He is lying through his teeth." Nor do you demand that the witness forthwith take a polygraph test. Even when the witness is telling lies, whole lies, and nothing but lies, maintain you calm and keep your cool.

You should have a bench book which is used exclusively to record your notes of evidence taken at the inquest. Don't use the bench book for other purposes.

You should take detailed notes.

You may say: "why take detailed notes because we are getting daily transcripts?"

Because:

1. It will save you time - you are there - you can "boil down" to a few sentences what otherwise would take a whole page of typed transcript.

2. You may need your careful notes to refer back to at any given time; if you don't have those notes, what do you do?

3. You have to charge the jury at the end - you'll need good notes.

Taking good notes helps you to understand the evidence and its nuances. By writing as you listen you are using two senses at the same time. You are not just listening. Alas, there may be the odd occasion when the movement of your pen is the only thing that is keeping you awake.

You may wish to utilize different coloured pens to:

- (a) underline
- (b) demark
- (c) emphasize etc.

As you know, when we have jury trials, we have voir dires. Anything that has not been repeated in the presence of the jury from the voir dire is not evidence before the jury. In order to keep matters straight, I go through all the "voir dire pages" and put a red line from top to bottom. This way, when I look through my bench book, I automatically know that those pages are forbidden territory and must not be read back to the jury in any way, shape or form.

In your notes, you should keep a good index of the witnesses and of the exhibits. A good Registrar, on request, will supply you with an updated exhibit list from time to time.

It's wise to go over your notes each and every night. A short form or contraction may be a great idea while you are writing during the course of the evidence. However, after a few days, you will forget what the contraction means unless you've gone through your notes and expanded the contraction.

It is an extremely rewarding practice to dictate a summary of the evidence of EACH witness. Do it at the end of EACH DAY while everything is fresh in your mind.

You should, as you take notes either by pen or upon your lap-top computer, keep one eye on your surroundings. Keep an eye on the witness, the jury, the lawyers and the body of the courtroom. It is amazing what you'll see when everyone thinks that you have both eyes glued to the page upon which you are writing.

I spoke earlier about keeping a bench book for the purpose of taking notes during the course of the inquest. That practice avoids the pitfalls of reading from assorted pieces of paper, a practice that can create problems for you.

May I give to you an example of one of those problems?

An English cartoon, entitled "M'Lud" by Kathryn Lamb, has two frames. Frame #1 shows a stern faced English judge, duly wigged, sitting on the dias. Below the dias is the accused and his lawyer. The judge is saying: "You stole a case of vintage champagne, six bottles of port, a large stilton, three pheasants, a set of black silk lingerie and an economy size pack of alka-seltzer".

Frame #2 shows the same judge; he is now red-faced. In this frame the judge says: "Sorry, that's my shopping list".

Beware of random notes written on pieces of scrap paper.

3. Attitude

(a) When I spoke about demeanour and bearing, I did not wish to intimate that a presiding officer should have the slightest degree of haughtiness or exhibit any suggestion of being overbearing.

If you treat one and all as you would wish a judge or coroner to treat you, you will never go wrong.

Remember what Abraham Lincoln said: "No one is above the law and no one is beneath the law".

(b) We must always remember that we are but trustees and custodians of whatever power and authority that we exercise. We should always remember that people defer to us not because of who we are but because of the office that we hold.

PLEASE, PLEASE, PLEASE, don't talk about "my court" or "my courtroom". In my view, those phrases smack of arrogance. It isn't your court or my courtroom.

We preside in this or that courtroom, but we have no title or claim or deed to that courtroom. We should reserve the word "my" as a modifier for the word "fault".

(c) Keep the proper perspective - don't get carried away by your office and the authority that it carries.

When I was appointed a judge in November 1971, a lawyer friend of mine (now a colleague), sent me a cartoon which was published in the "New Yorker". I have kept that cartoon in view under the plastic cover of my desk pad ever since. It shows two judges putting on their black robes and the caption underneath says:

"This daily metamorphosis never fails to amaze me. Around the house, I'm a perfect idiot. I come to court, put on a black robe, and, by God, I'm it."

If we begin to get carried away about "who we are" at the office, we should remember the "home part" of that cartoon.

(d) Keep your sense of humour.

If you don't have a sense of humour, acquire one. If you are able to see the humour of a situation, it will help you keep a sense of proportion, a sense of balance and perspective. A good sense of humour does wonders for your blood pressure.

You can appreciate and relish the humour of a situation without saying a word and without a grin from ear to ear. A word of caution: you are not to be a joker nor a punster. Usually, there are two things that can be said about a judicial joke: (i) it isn't judicial, and (ii) it isn't funny.

(e) Anticipation

Without a doubt, anticipation can be your greatest ally. If you can see a situation developing before it blossoms, then you can mentally size up the players and the game and be ready for the situation when it materializes. If you have anticipated the problem before it happens, you will be able to deal with it and make your rulings with nary a ruffled feather and, in the process, look oh so wise and learned. So, always try to look ahead and anticipate what might develop.

If you anticipate the problem at 10:00 a.m. and it does not burst upon the scene until noon, you've had two hours to get ready to give an "instant answer to the problem that just cropped up".

(f) Know the Players

At advocacy courses for young lawyers, they are taught: "Know your judge" - that is, find out about him/her ahead of time - what's his/her reputation? Short fuse? Long suffering? Easily rattled? Or, total equilibrium at all times?

Try to "know your lawyers". Your best guide is your own experience, if any, with the lawyer. What is her area of practice? Does he/she have a good reputation of being trustworthy? Is she honest, reliable? Does he keep his word? Is he helpful or does he bait the presiding officer?

I think the proper approach is for you to assume that all counsel are honest, trustworthy and reliable. Maintain that premise unless and until the facts demonstrate the contrary. Always give the benefit of the doubt unless and until persuaded otherwise.

It's the old story: by possessing knowledge of what you will face, the unknown factor has been reduced and you will be able to take a bearing and set your course.

(g) Don't be over-awed by the "big name lawyer", whether it be Crown counsel or defence counsel. The "big name lawyer" should be treated with an even hand; it should be apparent to the onlooker that the "big name lawyer" is not shown any favouritism.

So, too, no one - lawyer or witness - should ever start out with a "handicap" imposed by the presiding officer. Make sure that the playing field is even - no slopes, no tilts. If you have an abiding dislike of a witness or a lawyer, leave the dislike outside of the hearing room. If you don't cast aside your personal likes and dislikes, chances are the hearing will degenerate into a "grudge match".

(h) Don't be over-awed by the expert witness. No matter how much you may agree with the expert, don't give the appearance of applauding, don't become a cheerleader.

From time to time we should remind ourselves what Chief Justice Dickson said in 1985 when writing about expert evidence:

"Expert evidence is always expensive, sometimes simply not available and frequently unreliable."

[Towne Cinema v.

The Queen, [1985] 1 S.C.R. 494, 514]

I realize that he was speaking about expert evidence in the field of pornography; nevertheless, he was speaking of experts.

(i) Conflict of Interest

If you have a personal interest or if a good friend or colleague is going to give controversial evidence at the inquest, should you preside? The answer is "no". I think the question that you should always ask yourself is, using Lord Denning's phraseology: "What would the reasonably informed man sitting in the back of the omnibus think?"

If that reasonable man/woman would say "No", don't preside.

The bottom line is: "If in doubt, don't".

What do you do, how do you act and react if a friend of yours shows up unexpectedly as a witness at the inquest?

You treat her/him the same as you would any other witness: with courtesy, respect and deference. There should not be any "Hi, Charlie or Hi, Marie". Do what you would do with any other witness and say "thank you" as he/she is leaving the witness box.

What I have just said is capsulized in another cartoon called "Briefcase". It shows a lawyer up close to the dias; he is whispering to the judge. The caption reads: "Your honour, since it's getting late, would you mind hearing the rest of my closing argument when you and Betty come over for dinner tonight?"

You've heard it all a thousand times before: it is important that justice not only be done, but be seen to be done. Perception is very important.

(j) Keep an open mind

Remember that you, the presiding officer, are there to keep the show on the rails, to "direct traffic". It is the jury that will make the decisions on the issues. Don't try and brainwash them in a blunt or in a subtle way. If you try and impose your views in a ham-fisted way, human nature being what it is, usually the jury will rebel and come back with the very opposite conclusions from the ones that you so vociferously embraced. Again, be moderate, travel the middle road, keep an open mind and display an even hand.

I mentioned earlier that it is the presiding officer's duty to keep the trial or the inquest "on the rails". It is her/his duty to keep matters focused and not let the hearing bog down into irrelevant side issues.

Professor McCormick, the author of a text on evidence, summed it all up by saying: it is the duty of the trial judge to prevent the "side show" from taking over the "circus".

(k) The Judge or Coroner and Booze.

In days of yore, after the jury had retired to deliberate on their verdict, oftentimes, Crown counsel and defence counsel would knock on the judge's door and arrive with a bottle of whisky. I have heard horror stories about some of those "social events".

My purpose in mentioning those olden days is simply to say that, in my view, the trial judge and coroner have enough problems without turning down that road to self-destruction.

Therefore, the trial judge and the coroner should be abstainers while presiding. No booze on or at the job. We need all our wits about us at all times.

Again, it is a matter of perception. If people smell alcohol or know that the judge or coroner has "had a few" at lunch, what impression does that convey?

In summary, what people look for and what people expect in a presiding officer is that she/he be FAIR.

If you are fair and you convey that to those who participate and to those who listen and watch, you are a good presiding officer.

It is not necessary that people go away saying: "I like him/her". The important thing is that people go away saying: "She/he gave everyone a fair shake."

You can be firm and run a tight ship with no nonsense allowed, and yet be fair, uphold and convey all the principles of justice.

At the swearing-in of a judge, we have all heard those quotes that the raw material for a new judge should be someone who is courteous, someone who is prepared to listen to both sides, someone who comes to the scene with no preconceived ideas, biases or prejudices and one who is prepared to render a decision based on what he or she hears during the course of the trial. Those quotes usually go on to say that if the new judge happens to know a little law, that is an added bonus.

In passing, I observe that it is now common place for criminal jury trials to last much longer than in former days. So, too, inquests.

It has been the experience of judges presiding at long criminal jury trials that it is absolutely essential to start out with a happy, contented jury. It is then essential for the presiding judge to make sure that those jurors stay happy until they are finally discharged. All you need is one malcontent to turn the process into a nightmare of requests, demands, whining etc.

It is important for the presiding officer to be attentive to the jurors' reasonable requests. It is crucial to ensure that you have a wise, pleasant and conscientious court constable looking after the jury.

A little "preventive medicine" will pay big dividends and eliminate a carload of headaches.

B. The Judge or Coroner that you hear

1. A judge or coroner should be a good listener. He/she should not only listen but should also hear.

2. Leave all the "smart remarks" and all the sarcastic remarks for some other place and some other time. You are paid to be wise, not to be a comedian. Trust me when I say that smart alec remarks will inevitably come back to haunt you.

Earlier, I said that you should keep a sense of humour. That is true, but never, never, ever say anything that produces humour at the expense of someone else - that is a "no, no" in capital letters. If the occasion presents itself and you have the personality that can handle it, you might want to poke a little fun at yourself; that is a good signal to the jurors. Be careful; if the wrong personality does it or the right personality does it the wrong way, it may come to pass that the jury is laughing at you and not with you.

3. Let me give a few quotations about judges interrupting the proceedings by asking questions and failing to be a good listeners:

a. Sir Francis Bacon:

"An over-speaking judge is no well tuned cymbol. It is no grace to a judge first to find that which he might have heard in due time from the Bar".

Be patient. The question you want to ask now will probably get asked in the next five (5) minutes.

b. Professor Glanville-Williams:

"The classic advice to a newly appointed judge is that he should take a sup of holy water in his mouth at the beginning of a case and not swallow it until the evidence on both sides has been heard".

c. Lord Hewart:

"The business of a judge is to hold his tongue until the last possible moment, and try to be as wise as he is paid to look".

If after counsel have asked all their questions, there is some important area that the lawyers have neglected to clarity, you ask the questions and then ask the lawyers if they wish to ask questions arising out of your questions. You should be careful not to open up a "can of worms" that does nothing to elucidate the main issues, but only throws a red herring across the path of the inquiry.

Remember the old adage - "if you get into the arena, you may get dust in your eyes."

4. When the judge or coroner speaks, it should be measured.

(a) You may find yourself quoted on the 10 second clip of the 6 p.m. news. You and I know that there is no circus safety net provided. If we fall, it is a free fall to the ground - there is no container of styrofoam particles at the bottom to break the impact.

(b) You should heed the carpenter's advice to his apprentice: "Measure twice and cut once". Think before you speak. If you don't, you will probably want to cry after you do speak.

Before you say anything, think about:

- (1) Whether you should say anything.
- (2) If you are going to say something, what is the purpose of what you are going to say?
- (3) If you are going to say something, what are you going to say?
- (4) Think of how your words will come out - try and cast it so that the purpose is accomplished and the job gets done, but you have not broken open a hornet's nest in the process.

On occasion, you and I have to deal with people who think that confrontational, disruptive tactics are the way to present and argue their case. Be prepared to deal with those people and those tactics in a calm and measured way. Perhaps in a few pithy phrases, you can remind these individuals of their function, and of your function, and that you intend to see to it that they are confined to their proper role.

If you decide to speak, choose your words very carefully.

If it is potentially an explosive situation, you may want to put down and pick up the pen several times, or turn pages while you buy time to think; or, you may want to call a short recess before you speak.

Here again is the "swan at work".

C. The Judge or Coroner and the process used in making rulings.

1. It is our duty to hear the submissions of the side making the motion or application; we then must hear from those opposing the application and then give the originator an opportunity to reply.

Reply is for the purpose of dealing with matters that arose during the opposing parties' submissions; it is not an opportunity to re-argue the case.

2. After hearing all the submissions, depending upon the situation, you may wish to adjourn:

- (i) to get some legal advice, and/or
- (ii) talk it over with a colleague, if it is a matter about which you are not sure.

If you adjourn, after you have consulted and done your research and made up your mind, sit down and write out your ruling in your bench book. Then, read it aloud to yourself. Is it sound? Does it make sense? Have you used any word or phrase that is going to cause problems for the hearing or for you? If yes, rewrite that part.

Have you kept it simple? Leave aside the "\$2.00 words"; they simply confuse and they do not impress anyone.

Is it so phrased that it is clear and concise?

Is it as brief as you can craft it? If it has an elegant lilt, so much the better.

If you decide not to adjourn, but to give the ruling then and there, may I suggest that you have those present sit down while you write out your decision in your bench book. Then, after you have finished writing, you read aloud what you have written.

Why should you adopt this regimen?

(a) It forces you to think about what you are going to say.

(b) It forces you to focus on the problem.

(c) You can craft it so that it is brief, simple and clear.

(d) It helps you get a verb in every sentence, eliminates split infinitives and dangling participles. It eliminates ending a sentence with a preposition.

(e) It will produce a transcript that will not be replete with "ahs" and repetition. You can see what you are about to say.

This process may sound like it came out of the 18th century, but I can assure you that it is time well spent.

As a bonus, you have a record of what you will have said before you say it.

Earlier, I mentioned that you should not use any "\$2.00 words". I should like to read to you a vignette that appeared in a publication called "Medical Economics" and was reprinted in the "Trial Diplomacy Journal". Because it appeared in a medical publication, its veracity is guaranteed!!!

"Lawyers aren't the only professionals who like to use murky, pompous language. Here is an exchange in a courtroom following an attorney's request that the doctor witness tell the jury the cause of death:

"Well, in plain language, this man died of an edema of the brain that followed a cerebral thrombosis or possibly embolism that followed, in turn, an arteriosclerosis combined with the effect of gangrenous cholecystitis."

"Well, I'll be goddamned," came a voice from the jury box.

"Ordinarily," responded the judge, "I would fine a juror for such an outburst, but in this instance, sir, I cannot impose a penalty because the court was thinking exactly the same thing." "

I mentioned earlier about consulting fellow coroners during an adjournment, or during a luncheon adjournment, or during an overnight adjournment. This is a practice that will reap abundant rewards for you. If you call up an experienced, respected coroner, and present your problem, chances are that your experienced colleague faced the same problem 6 or 7 years ago. He/she will be able either to answer your question or at least be able to steer you in the right direction.

"It is obvious that no outside interference may be used to compel or pressure a decision maker to participate in discussions on policy issues raised by a case on which he must render a decision. It also goes without saying that a formalized consultation process could not be used to force or induce decision makers to adopt positions with which they do not agree. Nevertheless, discussions with colleagues do not constitute, in and of themselves, infringements on the panel members' capacity to decide the issues at stake independently. A discussion does not prevent a decision maker from adjudicating in accordance with his own conscience and opinions nor does it constitute an obstacle to this freedom. Whatever discussion may take place, the ultimate decision will be that of the decision maker for which he assumes full responsibility."

Consolidated-Bathurst Packaging Ltd. vs. I.W.A. and O.L.R.B. [1990] S.C.R. 282, 332-3.

Personal experience is a lasting teacher, but why not avail ourselves of and benefit from the personal experience of others?

I know that I mentioned it to the coroners' seminar in 1989, but I think it is important enough to be repeated. Often times a question of law or a question of admissibility of evidence arises late in the day. Everyone is tired - nerves may be threadbare. The presiding officer, understandably, may give in to the natural tendency of "let's get rid of the problem" and make a snap decision before that day's session comes to an end.

The better way is to postpone your ruling until the next day and continue to hear non-contentious matters for the balance of the day. If that procedure is not possible, adjourn for the day. That will give you time to think and, perhaps, confer about the problem. Often, the horrendous problem of 4:00 p.m. today will find an easy solution, solve itself or disappear before resuming the next morning. Hot heads will have a chance to cool; logic and reason will have an opportunity to take control.

3. After you have made your ruling, you move on.

Don't let any counsel re-argue the matter whether he/she attempts to do it "four square" or with a "quarter turn".

You do not allow the same motion to be argued more than once.

Having said that, there may be a rare occasion when the "loser" will revive the matter and, for additional/other reasons, show you why you were wrong.

If that happens, and if it is something that is capable of being reversed at that stage, then, after hearing further submissions from all interested parties, "eat crow", bury your pride and reverse your ruling. It will be a chastening experience, but you will be doing the right thing.

You do your best at the time, then you move on to face the next problem. You do not spend your time ruminating and asking: "Was I right?" If you do that, you will paralyze yourself into a state of inertia.

An accused is entitled to a fair trial, not a perfect trial. So, too, an inquest should be fair, not necessarily perfect. After the inquest is over, move on. Don't post mortem the inquest.

I dare say: neither the perfect trial nor the perfect inquest has ever taken place. I doubt whether a perfect trial or a perfect inquest ever will take place.

D. Conclusion

You and I have a picture in our mind of the ideal presiding officer.

My ideal was articulated by John Henry Cardinal Newman in his book: "On the Scope and Nature of a University Education".

[J.M. Dent, 1949: p. 203-205].

At page 203-205 of that book, the author gave his definition of a "gentleman".

I know that it was written in the "masculine only", but I think it defines the qualities we hope to see in any presiding officer, whether that person be female or male.

I should like to quote part of it to you. I would ask that where it reads "he" or "him", you add "she" or "her".

"Hence it is that it is almost a definition of a gentleman to say he is one who never inflicts pain. This description is both refined and, as far as it goes, accurate...He is never mean or little in his disputes, never takes unfair advantage, never mistakes personalities or sharp sayings for arguments, or insinuates evil which he dare not say out. From a long-sighted prudence, he observes the maxim of the ancient sage, that we should ever conduct ourselves towards our enemy as if he were one day to be our friend. He has too much good sense to be affronted at insults, he is too well employed to remember injuries, and too indolent to bear malice. He is patient, forbearing, and resigned, on philosophical principles; he submits to pain, because it is inevitable, to bereavement, because it is irreparable, and to death, because it is his destiny. If he engages in controversy of any kind, his disciplined intellect preserves him from the blundering discourtesy of better, though less educated minds; who, like blunt weapons, tear and hack instead of cutting clean, who mistake the point in argument, waste their strength on trifles, misconceive their adversary, and leave the question more involved than they find it. He may be right or wrong in his opinion, but he is too clear-headed to be unjust; he is as simple as he is forcible, and as brief as he is decisive. Nowhere shall we find greater candour, consideration, indulgence: he throws himself into the minds of his opponents, he accounts for their mistakes. He knows the weakness of human reason as well as its strength, its province and its limits."

In closing, may I say: I hope that something of what I have said here today will be of assistance to you in your duties as presiding coroners. I thank you for your attention. It was my pleasure to be with you today. I'm glad that I conquered my hysteria.

Section 9

- (2) *The only police force noted in this section is the Ontario Provincial Police. A number of policing/investigative agencies have been used in cases where the jurisdictional police force is in a conflict situation or is unable to complete the investigation for any reason. For example the Windsor City Police investigated a shooting by the O.P.P., Metro Toronto Police investigated a death in a police cruiser when the O.P.P. and York Regional Police were involved in the arrest.*

Recently the Special Investigation Unit has supplied assistance to the Chief Coroner in a number of investigations involving police activity.

This section provides an opportunity for rewrite when the Act is next amended. When you find yourself in this situation discuss with your Regional Coroner or head office. The Chief Coroner will make the decision.

Section 10.4

A number of deaths have gone to mandatory inquest where police were involved in an assistance role but there was no police action per se. For example, if a person died while the police have hands on the patient, has handcuffs on, is in a cruiser or police station but for purposes other than arrest, the person is considered detained for the purposes of the Coroners Act.

For example; the police handcuff a violent patient being picked up off the street by paramedics in order to facilitate transport to definitive care and the patient arrests with the handcuffs on and there is a failure of resuscitation, or a policeman is acting on authority of a form 1 and is assisting a paramedic team to subdue a psychiatric patient in the patients home;

Section 10.5

Although Industrial/work related deaths are not specifically spoken to in the act, it has been and continues to be the direction of the Chief Coroner that inquest should be considered in all work related deaths.

Section 18

- (1) This is accomplished by submitting a properly completed Form 3.*

Section 18

- (2) Requests for disclosure under this subsection should be in writing. The written request should be placed in the deceases' file. The rights of the family under this section pertains to the investigation. There is no specific right of the family to this information if an inquest has been called.*

When an inquest has been called you may wish to withhold this information from the family until the pre-inquest meeting especially if there is any concern of the information being used in any way which will interfere in the normal inquest process. Disclosure at the pre-inquest meeting upholds the principle that all parties to an inquest are equal.

Section 20

This applies to non-mandatory inquest. If neither of 3 a,b,c apply inquests are mandatory into construction/custody/mining deaths.

Section 24

Exhumations may be ordered by a number of parties.

Section 57 (3) Cemeteries Act says "A coroner who has issued a warrant for the holding of an inquest upon a dead body may direct it to be disinterred.

A. A family may disinter a body through the medical officer of Health working with the Cemetery Supervisor.

B. If there are Medical/Legal issues the following apply;

(1) a family in a Civil Law suit must arrange their own disinterment

(2) in a criminal matter the crown or police can disinter on an Attorney General's Warrant

(3) if for a coroner's investigation the body can be disinterred on a Solicitor General's Warrant

(4) if for purpose of an inquest the body can be disinterred on a Coroner's Warrant.

A coroner shall not order an exhumation without first discussing it with the Regional Coroner and the Chief Coroner. See Section 4 (b).

- Section 31* (2) *The Coroner should have this in mind at all times when dealing with third parties either during investigations or when conducting an inquest.*
- Section 32* *Should be read in conjunction with section 43 (2).*
- Section 33* *The constable referred to in this case may be a member of (a) the jurisdictional police, (b) Ontario Provincial Police, (c) alternate police force.*
- Section 40* (1) *Issuing a summons to potential witness does not obligate the coroner or his counsel to call that witness.*
- Section 41* *The Chief Coroner has directed that when an Agent is acting for a party with Standing at an Inquest that Agent be requested to sign an "undertaking for Disclosure." If an Agent refuses to sign such an undertaking he/she shall not be given disclosure. In the case where an Agent is representing a party with Standing all those representing parties with Standing shall be asked to sign the "Undertaking for Disclosure". A copy of this form is at page___ of this manual. Once a common form is available, all parties receiving disclosure will be asked to sign such a disclosure form.*
- It may be appropriate in any other inquest to seek undertakings prior to disclosure.*

- Section 44
- (5) Unless there are circumstances which make copying a record difficult (eg volume), it is usual for a copy to be entered. If it is necessary to summons some one to bring the records, they should be advised to bring both the original and a copy. After being sworn and identifying the copy as being an exact duplication of the original the witness may be excused and be allowed to retain the original. The original document may be recalled at anytime there is a dispute.

Section 45

- (1) *If the Inquest is taking place in other than a formal court setting, care has to be taken to ensure adequate recording equipment is available. Some court reporters have their own equipment, other times it will have to be rented. This should be normally looked after by the Coroner's Constable. The Chief Coroners office actually owns one set of recording equipment. This system can be used if there is difficulty arranging for a court reporter who has their own equipment.*

Untrained monitors have used this system and this practice is satisfactory as long as it is done with the approval of the crown attorney as required by this section. This system normally resides in the Northeastern Regional office but can be sent to other locations by Police or courier service if required.

On occasion court constables have secured the services of freelance court reporters when regular court reporters are not available. These freelance reporters work at different rates. The court constable must be aware of this and it must be agreed that they will work for the fees that are permitted by regulation under the Coroners Act.

Any unique arrangement must only be made with the approval of your Regional Coroners.

- Section 45 (2) *The fees are set out in Regulation 185 (Coroners Act). The transcription should be ordered directly from and payment made directly to the court reporter who made the recording.*
- Section 48 (1) *Some care has to be exercised in the use of interpreters. For example, the coroners system should not pay for an interpreter to sit with any party with standing so as to keep them aware of the proceedings. Interpreters should be matched with respect to time for each witness. The coroner's constable has the responsibility for arranging for interpreters. They must be given enough time to do so and any change in timing of witnesses must be discussed with them.*
- Section 48 (2) *To be read in conjunction with section 9. There may be exceptions to this if an alternate police force has been requested by the Chief Coroner to act in lieu of the jurisdictional police.*
- Section 49 *Self explanatory.*
- Section 50 (1) *To be read with section 47.*
- Section 50 (2), (3) *Although not a usually a problem, a number of coroners have had some unique experiences in invoking these sections. If you have a particular problem your Regional Coroner or the Chief Coroner can give you the benefit of their experiences in these matters.*

Section 51

On rare occasions witnesses have not appeared. On all occasions to date a call from the Chief Coroner to the witness's superior has produced the witness to the Court. You should call before acting on this section. There are other effective ways of ensuring subpoena compliance.

Section 52

(1) The Chief Coroner directs that except in particular circumstances an explanation of each verdict should be submitted with the verdict. It has become practice to submit an explanation for each recommendation. For example, what evidence led to that particular recommendation or what explanation did the jury give you for their making that particular recommendation? It is helpful to discuss the verdict with the jury briefly after you have closed the Inquest and are personally thanking them.

This explanation will be sent to the various persons, institutions, ministries, etc. with your verdict.

Use of Subpoena

Subpoena's are normally used by the coroner to summon witnesses and materials to the inquest. The coroner is the only person involved in the inquest with subpoena powers.

Occasionally you may get a request for a subpoena from other persons, agents or counsel. Sometimes persons willing to testify on behalf of a person with standing has restrictions place on them by employers. The Chief Coroner feels that it is appropriate to use subpoena power if it will facilitate the proceeding of the inquest. However, you and coroner's counsel may require an undertaking with respect to financial obligations, the materials which are to be supplied by the witness and the timing of the witnesses appearance. The coroners system should not incur any responsibility for costs unless the witness is required by the coroner's counsel. The coroner should be cautious about supplying a subpoena in this manner and may wish to discuss it with the Regional Coroner.

If you are unsure about the use of subpoena power at any time, please call your Regional Coroner or the Chief Coroner's Office.

CORONER'S CONSTABLES INQUEST CHECKLIST

STAGE 1

Booking Notification	
Warrant for Holding an Inquest (Form 4)	
Notice of Holding of Inquest - Crown (Form 13)	
Notice of Holding of Inquest (Form 10)	
Disclosure Forms	
Police:	
Inquest Witness List	
Proposed Method Form	

STAGE 2

Summons to Serve as a Juror in an Inquest	
Summons to a Witness before an Inquest	
(Confirmation of Service, if necessary)	

STAGE 3

Return of Constable	
Witness Checklist	
Exhibit Protocol	
Verdict of Coroners Jury	
Verdict Explanation (A) & (B)	

STAGE 4

Coroner's Investigation/Inquest Invoice	
Jurors Account	
Witness Account	
Order for Payment Reporter/Monitor	
Interpreter Invoice	
Experts Account	
Index Card(s)	
Return of Exhibits	

PROPOSED METHOD FOR SETTING UP AN INQUEST BRIEF

Adherence to the following format will result in a professional and uniform presentation.

Use LONG FORM PAPER.

NUMBER the pages on the upper right-hand corner.

BINDER COVER: The centre of the cover should read:

INQUEST
RE: DEATH OF
(Name of Deceased)

SECTION: 1

INQUEST
TOUCHING THE DEATH OF:
(Name of the deceased)

DATE:

TIME:

PLACE:

CAUSE:

INQUEST CORONER:

LOCATION OF INQUEST:

NOTE: Place name, rank, number and unit of the officer in charge of the case in the bottom right corner.

SECTION: 2

Synopsis of incident and history of the deceased.

SECTION: 3

List of exhibits.

SECTION: 4

Complete alphabetical index.

SECTION: 5

Witnesses in Brief - Show name, address, phone number, involvement and page number.

SECTION: 6

Drawings, Diagrams, Newspaper Clippings etc....

SECTION: 7

Post Mortem Report.

SECTION: 8

Toxicology Report.

SECTION: 9

Biology Report.

SECTION: 10

Firearm examination report and/or ballistics reports (if applicable).

SECTION: 11

Witness statements.

NOTE: MEDICAL RECORDS and/or CHARTS should be placed in a SEPARATE BINDER.

**IN THE MATTER OF AN INQUEST INTO THE DEATH
OF:** _____

I, _____ acknowledge receipt this _____ day of _____, of
a complete copy of the confidential Crown brief (hereinafter referred to as "the
brief") prepared by _____ and
for the aforementioned Inquest. I further acknowledge and hereby undertake to
comply with and abide by the following conditions:

- (a) I will not use the brief or its contents, for any purpose
other than the conduct of the aforementioned Inquest;
- (b) I will not make or cause to be made any reproductions,
copies or photocopies of the brief or any portion of the brief;
- (c) I will not disclose or knowingly assist others in any way
to disclose any portion of the contents of the brief to
any member of the media or press, nor will I discuss
the contents of the brief with any member of the media
or press, prior to such information being introduced
into evidence at the Inquest; and
- (d) Upon the completion of the aforementioned Inquest,
I will return, in its entirety, the brief, to
of the _____

NAME

DATED AT _____, ON THE _____ DAY OF _____,

WITNESSED BY:

PLEASE BE SEATED.

This Coroner's Inquest into the death of _____
is now in session Dr. _____ presiding.

Counsel to the Coroner's is M _____ Crown Attorney.

OYEZ! OYEZ! OYEZ!

Ladies and Gentlemen you are summoned to attend here this day to inquire into and determine for our Sovereign Lady, The Queen, the identity of the Deceased, HOW, WHEN, WHERE and BY WHAT MEANS the Deceased came to his/her death. Affirm your presence as your names are called.

The jury is present and correct M _____ Coroner.

The Court Reporter is _____

The Coroner's Constable is _____

I did summons the JURY and I do find them to be free of interest or bias and qualified in every respect to act as jurors to the best of my knowledge.

I did not summons the JURY. The JURY was summoned by _____
but I do find them to be free of interest or bias and qualified in every respect to act as Jurors to the best of my knowledge.

If I may interject M _____ CORONER the JURY has selected M _____
as FOREMAN and seated to your immediate left.

MEMBERS of the JURY please rise and take a BIBLE in your RIGHT HAND.

MEMBERS of the JURY, if you are sworn, answer with the word "SWORN" as your names are called. BE SEATED.

CAUTION

MEMBERS of the JURY, you are cautioned not to discuss this case with anyone other than among yourselves. Likewise all WITNESSES, PERSONS WITH STANDING, COUNSEL or AGENTS or ANY OTHER PERSON and the NEWS MEDIA are instructed not to approach the JURY.

ADJOURNMENT

This INQUEST stands adjourned until _____

RESUME FROM ADJOURNMENT

OYEZ! OYEZ! OYEZ! This INQUEST is now RESUMED. The JURORS will answer as their names are called.

FINAL ADJOURNMENT

This INQUEST is now recessed until the JURY arrive at their verdict.

CLOSING THE INQUEST

OYEZ! OYEZ! OYEZ! This INQUEST is now closed and the Jury is discharged. GOD SAVE THE QUEEN.

INQUEST BOOKING NOTIFICATION

Date of Notification _____

Officer Receiving Notification _____

Inquest Coroner _____

Name of Deceased _____

Address of Deceased _____

Date of Death _____

Coroner's Counsel _____

Investigating Officer _____

Category : Mandatory _____ Non-Mandatory _____

Inquest Date _____

Estimated Length _____

PERSONS TO BE NOTIFIED (BY FORM 10)

<u>NAME</u>	<u>ADDRESS</u>	<u>POSTAL CODE</u>	<u>RELATIONSHIP</u>
-------------	----------------	--------------------	---------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(over)



I direct you to summon five persons qualified to serve as jurors to appear before me at

_____ on the _____ day of _____ 19 _____
at _____ o'clock in the _____ noon at an inquest into the death of

And I direct you to appear before me at that time and place and to make a return of those you have summoned.

And I further direct you to notify the next-of-kin of the deceased person of the date, time and place of the inquest and also the following persons who may be substantially and directly interested in the inquest:

1. _____
2. _____
3. _____
4. _____

Dated this _____ day of _____ 19 _____, at _____

Coroner

for Area no. _____

(Français au verso)



Ministry of
the Solicitor
General

Ministère du
Solliciteur
général

The Coroner's Act-Province of Ontario/Loi sur les coroners - Province de l'Ontario

Notice of Holding of Inquest/Avis d'enquête du coroner

Form 13/Formule 13

Re: _____ deceased.
En ce qui concerne _____ décédé(e).

To: _____ Crown Attorney
À l'attention de _____ procureur de la Couronne.

Take notice that an inquest will be held into the death of
Soyez avisé qu'une enquête du coroner sur le décès de _____

on the _____ day of _____ 19 _____ at _____ o'clock in the
aura lieu à _____ le _____ à _____ heure(s).

_____ noon at _____ .

Date

Coroner

for Area No.
Région n°



Ministry of
the Solicitor
General

Office of
the Chief
Coroner

Ministère du
Solliciteur
général

Bureau
du coroner
en chef

Notice of holding of inquest
Avis d'enquête du coroner

Form 10 / Formule 10

On ce qui concerne _____ deceased.
, décédé(e).

To:
À l'attention de _____

Take notice that an inquest will be held at _____ on the
_____ day of _____ 19 _____, at _____ o'clock in the _____ noon
into the death of _____

And take notice that you may attend at the inquest and that if you have not been designated as a person with standing at the inquest, you may apply either before or during the inquest, to the coroner to designate you as a person with standing at the inquest.

Avis vous est donné qu'une enquête du coroner aura lieu à _____

le _____ 19 _____ à _____ heure(s), concernant le décès
de _____

Avis vous est également donné que vous pouvez assister à l'enquête, et que si vous n'avez pas été désigné comme personne ayant qualité pour agir à l'enquête vous pouvez demander au coroner avant ou pendant l'enquête de vous désigner comme telle.

Date

Constable

Note: Section 41 of the Coroners Act provides as follows:

- (1) On the application of any person before or during an inquest, the coroner shall designate him as a person with standing at the inquest if he finds that the person is substantially and directly interested in the inquest.
- (2) A person designated as a person with standing at an inquest may,
- (a) be represented by counsel or an agent;
 - (b) call and examine witnesses and present his arguments and submissions;
 - (c) conduct cross-examinations of witnesses at the inquest relevant to the interest of the person with standing and admissible.

Remarque: L'article 41 de la Loi sur les coroners stipule ce qui suit:

- (1) Si une personne lui en fait la demande par voie de requête avant ou pendant une enquête, le coroner peut désigner cette personne comme ayant qualité pour agir à l'enquête s'il juge que cette personne est considérablement ou directement intéressée à l'enquête.
- (2) Une personne que le coroner désigne comme ayant qualité pour agir aux fins de l'enquête peut:
- (a) être représentée par un avocat ou un représentant;
 - (b) appeler et interroger des témoins, présenter ses arguments et sa plaidoirie;
 - (c) procéder au contre-interrogatoire des témoins à l'enquête sur des questions connexes à son intérêt et qui sont admissibles.



Ministry of
the Solicitor
General

Office of
the Chief
Coroner

Summons to Serve as a Juror on an Inquest Assignation pour faire partie d'un jury à une enquête du coroner

Form 9/Formule 9

Ministère du
Solliciteur
général

Bureau
du coroner
en chef

deceased.
décédé(e).

En ce qui concerne _____

To:
À l'attention de _____

Pursuant to a warrant issued by _____, Coroner, you are
hereby summoned and required to attend as a juror at _____ on the
_____ day of _____ 19 _____ at _____ o'clock in the _____ noon,
at an inquest into the death of _____.

Conformément à un ordre émis par _____, coroner, vous êtes par
la présente sommé d'assister comme juré à _____
_____ 19 _____ à _____ heure(s), à l'enquête du coroner
sur le décès de _____.

Dated this _____ day of _____ 19 _____ at _____

Fait à _____, le _____ 19 _____

Constable

For further information contact

Pour de plus amples

renseignements, communiquez avec _____

Name/Nom

Telephone/Téléphone

Note: If you fail to attend at the inquest at the time and place specified, without lawful excuse, you are liable to punishment by the Divisional Court of the High Court of Justice for Ontario in the same manner as if for contempt of that Court.

Remarque: Si vous n'êtes pas présent à l'enquête du coroner à la date et à l'endroit indiqués sans excuse légitime, vous serez passible de sanctions pénales ordonnées par la Cour divisionnaire de la Haute Cour de justice de l'Ontario, comme s'il s'agissait d'un outrage à ce tribunal.



Ontario

Ministry of
the Solicitor
General

Office of
the Chief
Coroner

Summons to a Witness Before an Inquest

Re: _____, deceased.

You are hereby summoned and required to attend before an inquest to be held at

_____ in the _____ of _____
on _____ day, the _____ day of _____ 19 ____
at the hour of _____ o'clock in the _____ noon (local time), and so from day to day until the
inquest is concluded or the coroner otherwise orders, to give evidence on oath touching the matters in question in the
proceedings and to bring with you and produce at such time and place

NOTE: The investigating officer will advise you of the exact time and date
of your appearance at the inquest.

Dated this _____ day of _____ 19 ____ at _____

Coroner

For further information contact:

Name

Telephone

Note: If you fail to attend and give evidence at the inquest, or to produce the documents or things specified, at the time and place specified, without
lawful excuse, you are liable to punishment by a judge of the county or district court in the same manner as if for contempt of that court or
disobedience to a subpoena.

The Coroners Act – Province of Ontario

BENCH WARRANT

TO:
.....
.....
.....

WHEREAS proof has been made before me that
was duly summoned to appear before an inquest into the death of
..... deceased, at on the day of
..... 19; that the presence of the said
is material to the inquest, and that the said has failed to attend
in accordance with the requirements of the summons.

THESE are therefore to command you to take the said
to bring and have him before the said inquest at there to
testify what he may know concerning the matters in question in the said inquest, and that you detain
him in your custody until he has given his evidence or until the said inquest has ended or until other
orders may be made concerning him.

GIVEN UNDER MY HAND this day of 19
at

.....
Judge of the Court of the
.....
.....



Ontario

Ministry of the Solicitor General
Ministère du Solliciteur général

The Coroner's Act - Province of Ontario / Loi sur les coroners - Province de l'Ontario
Return of Constable / Rapport du constable
Form II / Formule II

En

En le qui concerne

deceased

decedee

of

state that

Signature

de

declare que

1. Pursuant to the warrant for holding an inquest issued by _____
a Coroner for Area No _____ on the _____ day of _____ 19 _____
the following persons were summoned by me to attend on the _____ day of _____ 19 _____
at _____ o'clock in the _____ noon as jurors at this inquest
Conformément au mandat d'enquête du coroner délivré par _____ coroner de la
region no _____ le _____ 19 _____, les personnes suivantes ont été assignées par moi
pour assister le _____ 19 _____ à _____ heure(s) à titre de jurés à cette enquête

Name/Nom	Address/Adresse	Occupation	Jury Roll No N° de la liste des jurés
a			
b			
c			
d			

2. I believe that each person so summoned is qualified to serve as a juror / Je considère que toutes les personnes assignées ont qualité pour être jurés
3. The following next-of-kin of the deceased person have been notified of the date, time and place of the inquest
Les proches parents suivants de la personne décédée ont été informés de la date, de l'heure et du lieu de l'enquête du coroner

Name/Nom	Address/Adresse	Relationship to Deceased Lien avec la personne décédée
a		
b		
c		

4. The following persons who have been designated as persons with standing at the inquest or who may be substantially and directly interested in the inquest have also been notified of the date, time and place of the inquest.
Les personnes suivantes, qui ont été désignées comme ayant qualité pour agir à l'enquête du coroner ou qui peuvent être foncièrement et directement intéressées par l'enquête, ont été également informées de la date, de l'heure et du lieu de l'enquête.

Name/Nom	Address/Adresse
a	
b	
c	
Note	Constable

Note: Refer to Section 37 of Regulation 185 / **Remarque:** Consulter l'article 37 du Règlement 185.

CORONERS INQUEST WITNESS LIST

To be <u>completed</u> and <u>returned</u> to the Coroner's Constable no later than:		(YY/MM/DD)
Deceased Surname		Given Name
Coroner	Date & Time of Inquest (YY/MM/DD/hrs)	Date & Time of Incident (YY/MM/DD/hrs)

***NOTE:** It is the INVESTIGATING OFFICERS RESPONSIBILITY, in consultation with the CROWN ATTORNEY and the CORONER, ensure that WITNESSES appear ONLY on the date that they are REQUIRED to give evidence.

SURNAME	GIVEN NAME	RELATIONSHIP	
ADDRESS	POSTAL CODE	TEL. # (res.)	TEL. # (bus.)
SURNAME	GIVEN NAME	RELATIONSHIP	
ADDRESS	POSTAL CODE	TEL. # (res.)	TEL. # (bus.)
SURNAME	GIVEN NAME	RELATIONSHIP	
ADDRESS	POSTAL CODE	TEL. # (res.)	TEL. # (bus.)
SURNAME	GIVEN NAME	RELATIONSHIP	
ADDRESS	POSTAL CODE	TEL. # (res.)	TEL. # (bus.)

SURNAME		GIVEN NAME		RELATIONSHIP	
ADDRESS		POSTAL CODE	TEL. #(res.)	TEL. #(bus.)	
SURNAME		GIVEN NAME		RELATIONSHIP	
ADDRESS		POSTAL CODE	TEL. #(res.)	TEL. #(bus.)	
SURNAME		GIVEN NAME		RELATIONSHIP	
ADDRESS		POSTAL CODE	TEL. #(res.)	TEL. #(bus.)	
SURNAME		GIVEN NAME		RELATIONSHIP	
ADDRESS		POSTAL CODE	TEL. #(res.)	TEL. #(bus.)	
SURNAME		GIVEN NAME		RELATIONSHIP	
ADDRESS		POSTAL CODE	TEL. #(res.)	TEL. #(bus.)	
SURNAME		GIVEN NAME		RELATIONSHIP	
ADDRESS		POSTAL CODE	TEL. #(res.)	TEL. #(bus.)	

START DATE _____ **CONCLUDED ON** _____

[illegible]

WITNESSES called at the inquest of _____

CONTINUATION SHEET[illegible]

Signature of Foreman / Signature du président du jury

Signature of Coroner / Signature du coroner

31. (1) Where an inquest is held, it shall inquire into the circumstances of the death and determine

31. (1) Where an inquest is held, it shall inquire into the circumstances of the death and determine
- a) who the deceased was
 - b) how the deceased came to his death
 - c) when the deceased came to his death
 - d) where the deceased came to his death, and
 - e) by what means the deceased came to his death
- (2) The jury shall not make any finding of legal responsibility or express any conclusion of law on any matter referred to in subsection (1).
- (3) Subject to subsection (2) the jury may make recommendations directed to the avoidance of death in similar circumstances or respecting any other matter arising out of the inquest.
- (4) A finding that contravenes subsection (2) is improper and shall not be received.
- (5) Where a jury fails to deliver a proper finding, it shall be discharged. R.S.O. 1990, c. 93, s. 31.

31 (1) Si une enquête est tenue, les circonstances entourant le décès y sont examinées et les faits suivants y sont établis :

- a) l'identité du défunt
b) la cause du décès
c) le moment du décès
d) l'endroit du décès
e) les circonstances entourant le décès
- (2) Le jury ne doit pas faire de déclaration de responsabilité civile ou criminelle légale ni émettre de conclusion de droit sur les questions visées au paragraphe (1).
- (3) Sous réserve du paragraphe (2), le jury peut faire des recommandations visant à empêcher qu'un décès se produise dans des circonstances semblables ou portant sur une question de culpabilité de l'enquête.
- (4) La conclusion qui contrevient au paragraphe (2) est inacceptable et irrecevable.
- (5) Le jury qui ne parvient pas à une conclusion acceptable est libéré. R.O. 1980, chap. 93, art. 31.

EXHIBIT LIST

[illegible]

Received By _____
02/02/93

THE CORONERS ACT - PROVINCE OF ONTARIO

VERDICT EXPLANATION - A

NAME OF DECEASED:

SHORT SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH:

THE CORONERS ACT - PROVINCE OF ONTARIO

VERDICT EXPLANATION - B

NAME OF DECEASED:

REASON FOR EACH RECOMMENDATION WITH BRIEF EXPLANATION:



Coroner's Investigation / Inquest Invoice

• Handprint or type only

☐ Investigation, or, ☐ Inquest

Invoice date

Invoice number

Name of Coroner

Vendor number

Address

Postal code

Name of deceased

Date of death

Date of inquest

1. Fee for Services \$

For inquests only

Time inquest commenced

Time inquest concluded

Total hours at per hour = \$

2. Necessary distances travelled

Date	From	To	Kilometres
Total km			

at cents per km = \$

3. Additional expenses incurred in connection with this investigation / inquest

Explanation	Amount \$
Total additional expenses	\$

Invoice total \$

I certify that the above travel and/or additional expenses were necessarily incurred by me in connection with this investigation/inquest.

Coroner's signature



Date of Inquest.....

[illegible]

for Area No.

WITNESSES ACCOUNT

Date of Inquest

[illegible]

Residential Area No.



Ontario

the Solicitor
Generalthe Chief
CoronerMinistère
du Solliciteur
généralBureau
du coroner
en chefOrdre de paiement du (de la) sténographe judiciaire/
du (de la) préposé(e) à l'enregistrement magnétique

Invoice Date/Date de facturation

Name of Deceased/Nom du (de la) défunt(e)

Inquest held at/Enquête du coroner tenue à/au

Date

☐ Court Reporter
Sténographe judiciaire☐ Court Monitor
Préposé(e) à
l'enregistrement magnétique

Name/Nom

Address/Adresse

Telephone/N° de téléphone

Complete either Section A or Section B / Remplir la section A ou B

Section A

Hours
Nbre d'heures

Preparation Time (1/2 hr. maximum)

Préparation (1/2 heure maximum)

from/de

to/à

Inquest opened

Ouverture de l'enquête du coroner

Inquest closed

Clôture de l'enquête du coroner

Minus lunch recess (maximum deduction 1 hour) / Moins la suspension pour le repas (déduction maximum d'une heure)

Total hours

Nbre total d'heures

Total hours

Nbre total d'heures

Scheduled rate of

taux prévu de

= \$

Necessary mileage travelled / Distance nécessaire parcourue

From

De

to

à

km

From

De

to

à

km

Total number of kms

Nbre total de kilometres

@

à

per km

par km

= \$

Other expenses (provide explanation)

Autres dépenses (justifier)

Total other

Total des autres dépenses

\$

Grand Total

Total général

\$

Section B

Cancellation charge (48 hours notice not given)

Frais d'annulation (sans avis préalable de 48 heures)

hours

heures

@

à

per hour

de l'heure

= \$

Signature of claimant
Signature du (de la) réclamant(e)Signature of Coroner
Signature du coroner

The Coroners Act — Province of Ontario
EXPERT'S ACCOUNT FOR ASSISTING CORONER

Name of deceased

Date of Death

Service performed by

Address

1. Fee for services \$

2. Expenses necessarily incurred (Explain)

Total \$

Date Approved by
Coroner

Approved
Chief Coroner

NOTE: The Chief Coroner must approve a fee not exceeding \$500.00. The Minister must approve a fee in excess of \$500.00.

INTERPRETER'S INVOICE

INTERPRETER _____

ADDRESS _____

CITY _____ POSTAL CODE _____

PHONE NO. (bus) _____ (home) _____

LANGUAGE _____

SOCIAL INSURANCE NO. _____

COURT DATE(s)	COMMENCEMENT TIME	TOTAL TIME	NAME OF DECEASED
1.			
2.			
3.			
4.			
5.			
TOTAL TIME			

FEE FOR FIRST HOUR \$27.00 = \$ 27.00

FEE FOR ADDITIONAL HOURS:

_____ HOURS @ \$16.50/HR. = \$ _____

TOTAL FEE \$

I CERTIFY THAT I WAS IN ATTENDANCE AT THE CORONERS' COURT AS DESCRIBED ABOVE.

Signature of Interpreter

Date

Coroner



Ministère du
Solliciteur
général

The Coroners Act - Province of Ontario / Loi sur les coroners - Province de l'Ontario

Affidavit of Service / Affidavit de signification

Form 15 / Formule 15

I, _____, of the _____ of _____,
 Je soussigné, _____, du (de la) _____ de _____,
 in the _____ of _____,
 _____ de _____ (Occupation)
 make oath and say that I did on the _____ day of _____ 19____
 déclarer sous serment que j'ai, le _____ jour de _____ 19____
 serve _____ with a true copy of the attached summons,
 signifié à _____ une copie authentique de la sommation ci-jointe.

a) by delivering the same to and leaving the same with the said _____
 en délivrant ladite copie à _____

at _____
 à _____

b) by sending the same by registered mail addressed to the usual place of abode to the said _____
 en envoyant ladite copie par courrier recommandé à la résidence de _____

at
à

Signature

Sworn before me this _____ day of _____ 19____
 Déclaré sous serment devant moi le _____
 at the _____ of _____
 à la (au) _____ de _____
 in the _____ of _____
 _____ de _____

INDEX CARD

BITS RETURN

DATE: _____

*I authorize that the following exhibits entered at the Inquest touching the death of _____ held at the Coroner's Inquest
Courts _____ on _____
be returned to the owner(s) pursuant to Section 52, sub-section (2) of the Coroners Act,
R.S.O. 1980.*

CORONER _____ **M.D.**

EXHIBIT #

DESCRIPTION

RECEIVED BY

Coroner's Constable

MINISTRY OF THE
ATTORNEY GENERAL
LAW LIBRARY

